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**The Legitimacy of Elected and Appointed Institutions
and their Roles in a Political System**

A Dissertation Presented

by

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Abstract of the Dissertation

The Legitimacy of Elected and Appointed Institutions and their Role in a Political System

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This dissertation presents a study showing that the perceived legitimacy for elected and appointed institutions are two fundamentally different forms of legitimacy. They are derived from different sources and interact with the public in different ways. The legitimacy of appointed institutions is derived from perceptions of a principled decision-making process and the legitimacy of elected institutions is derived from elections. These two forms of legitimacy vary on three different properties. The first property is magnitude: the amount of legitimacy attributed to an institution. The second is effectiveness: the degree to which legitimacy is converted into acceptance of an institution's decision. The third is stability: the degree to which legitimacy resists the negative influence of displeasing decisions. Legitimacy derived from principled decision-making is high on effectiveness and high in stability, but only when the institution is perceived as using a principled decision-making process. Legitimacy derived from elections is low in effectiveness and high in stability, irrespective of decision-making process perceptions. The study uses both experimental and observational methods to take advantage of the wide variation in selection method for state supreme court judges in America. It examines the differences between the magnitude, effectiveness and stability of legitimacy for elected and appointed institutions. It compares the legitimacy of elected and appointed courts to the legitimacy of elected state legislatures. Each form of legitimacy allows its associated institution to fulfill its role in a political system. Elected institutions act as institutions of conflict and representation. Every democratic system requires an institution that represents the viewpoints of the public, but when the public is given the ability to express their voice, political conflict necessarily follows. Legitimacy derived from elections is able to withstand this conflict because of its high stability. The conflict and discord built up by elected institutions must be defused before it overwhelms a political system and threatens the system's stability. The role of appointed institutions of de-politicization is to defuse this political conflict before it can overwhelm the political system. The high effectiveness of legitimacy derived from principled decision-making helps defuse political conflict by inducing the public to accept displeasing decisions.

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Chapter 1 – The Two Forms of Legitimacy for Elected and Appointed Institutions

A legislature and a judiciary fulfill vastly different roles in any political system. The legislature provides a venue to fight over the contentious political issues of the day and for the voices of the public to be represented in the political system. The judiciary is a completely different type of venue in which the two sides of some political issue or legal dispute are provided a neutral arbiter that will help them to fairly resolve the dispute (at least in theory). One result of this difference is that the public usually holds the judiciary in higher esteem than legislatures because the mass public generally dislikes the political conflict that comes along with how a legislature operates (Hibbing and Theiss-Morse 1995, 2002).

Differences in the positivity or negativity that people feel toward an institution is important, but concentrating on this alone hides a more fundamental difference about the way the public interacts with these two types of institutions. Even if a judiciary and a legislature have the same level of support, the manner in which the public evaluates the institutions and the manner in which the institution affects the public's behavior and attitudes will still be drastically different. This is because each type of institution has its own type of legitimacy that is of a fundamentally different character from the other. This legitimacy concerns whether an institution has the moral or legal authority to make a decision, but the legitimacy for each type of institution is derived from different sources. One way of thinking about legitimacy is as a substance with some institutions having more of that substance than others. Using this analogy, the legitimacy of

an elected legislature is composed of a completely different substance than the legitimacy of an appointed judiciary. Just like someone would not react the same to water being dropped on them as they would if the substance was iron, the legitimacy of an appointed judiciary and an elected legislature does not interact with the mass public in the same way. While the amount of the substance matters in both, the type of substance is just as important.

These two types of legitimacy correspond to the divergent roles of the two types of institutions. Each form of legitimacy has a specific set of properties that give each type of institution the ability to fulfill its role in a political system. The legitimacy of an elected institution is derived from free and fair elections, and this form of legitimacy allows it to be an institution of conflict where the various political factions of a country fight over the salient political issues of the day. This incessant and disliked political conflict does not lead to a reduction in the legitimacy of a legislature like it would for a judiciary. The legitimacy of an appointed institution like the U.S. Supreme Court, on the other hand, is derived from perceptions of principled decision-making. This form of legitimacy, which separates the institution from the conflict inherent in elections, allows it to act as an institution of de-politicization that defuses political conflicts before they overtake and destabilize the political system. In the following chapters, I will present both survey and experimental evidence showing that the legitimacy of elected and appointed institutions differ in more fundamental ways than mere differences in magnitude. The two types of legitimacy affect the public in different ways and the dynamics governing when legitimacy decreases are different. In the remainder of this chapter, I will discuss the role of elected institutions of conflict and appointed institutions of de-politicization, how both are required for a well-operating political system, and how the properties of legitimacy attitudes for these two types of institutions match their role in the political system.

Institutions Acting as a Team

The separation of powers between multiple institutions is an indispensable part of the American system of government. This topic has probably received more attention in the literature on American political institutions than almost any other, and much of the time the emphasis is on the way that one branch provides a check on the other branches. This leads to the characterization of separation of powers as a system in which each branch is in conflict with the others. With this emphasis on conflict, one overarching goal is to determine the conditions under which one type of institution like a court will “win” and those conditions under which another type of institution like a legislature will “win”.

One obvious reason for this emphasis on the conflict between the branches is the founding fathers used it as one of the justifications for creating the system. For example in Federalist No. 51, James Madison famously describes the separation of powers system as one in which “ambition must be made to counteract ambition.” Additionally, he describes the system as one in which each institution must have the constitutional means to defend itself from the attacks of the other branches of government on its constitutionally granted power. It is through this mechanism of each institution attacking the other institutions and defending their powers that the rights of everyday Americans are protected.

This conflict between the branches is undeniably an essential and important aspect of the separation of powers system, but a somewhat underappreciated aspect of the separation of powers system is that the institutions of government sometimes act as a team where the strength of one institution makes up for the weaknesses of the other (c.f. Levinson and Pildes 2006). Just like in sports where individuals with complementary talents sometimes create a team that is better than the sum of their parts, the institutions of government can also have complementary

strengths that form a whole that is stronger than sum of the institutions individually. The purpose of this team of institutions has little to do with the protection of individual rights, but instead works to perpetuate the continued existence, stability and proper functioning of the political system.

In a seminal article on the role of the U.S. Supreme Court, Dahl (1957) noted the different roles of the Court and the other institutions in the American political system. The purpose and goal of those in the non-judicial branches of government is to form a “dominant aggregation of minorities” that constitutes a law-making coalition. With this coalition they make new policy or protect existing policy. The role of the U.S. Supreme Court on the other hand “is to confer legitimacy on the fundamental policies of the successful coalition” (Dahl 1957, pg 294). Dahl’s observations were made in the context of showing that the U.S. Supreme Court rarely, except for after a dramatic change in the dominant law-making coalition, fundamentally disagrees with the other institutions of government. While others studies (Casper 1976) may disagree with the extent of disagreement between the Court and the other institutions of government, it is almost beyond question that the Court agrees with other institutions more than it disagrees with them. The emphasis on those times when the institutions conflict is understandable, but since agreement is more prevalent than disagreement the literature should also examine what happens during these times of agreement and how the team of institutions acting as one affects the political world.

As suggested by Dahl (1957) when all the institutions agree the interesting dynamics are no longer between the institutions but how the public reacts to the policy that emerges from the team of institutions. Easton (1964) provides an in-depth theoretical analysis of this interaction between the public and the political system. He identifies those the conditions under which a

regime will function properly and survive. While most scholars know of Easton solely for his distinction between diffuse and specific support, that was just a small part of his analysis of political systems. Easton (1964) modeled politics as an open and adaptive system that accepts inputs, processes those inputs and creates policy outputs. The major inputs are demands placed on the system for action and public support for the system. These inputs are processed through many different avenues that could include the bureaucracy, legislation or judicial decisions. He identified what he called “the two essential variables of political life” without which “we would not be able to say that a society has any political life” (Easton 1964, pg 24). These two variables are the ability to:

1 - “allocate values for a society”

2- “induce most members [of a political system] to accept those allocations as binding, at least most of the time” (Easton 1964, pg 22)

Another key concept is system stress, and stress occurs when “there is a danger that the essential variables will be pushed beyond what we may designate as their critical range.” If these variables are pushed beyond this critical range, “the authoritative allocation of values are no longer possible, and the society would collapse for want of a system of behavior to fulfill one of its vital functions” (Easton 1964, pg 24).

There are two types of system stress. The first is called volume stress. The political system is able to process only a limited amount of inputs or demands. If the level of demands becomes too great for the political system, it will be at risk of collapsing because of an inability to allocate values for society. This type of stress is separate and distinct from stress through a lack of public support, which is the area of Easton’s work where the institutional legitimacy literature has concentrated its attention. If support for a system falls below a critical threshold,

that system's ability to accomplish the two essential variables of political life would falter, and the system would be at risk of collapse. It is in his discussion of support that Easton makes his famous distinction between diffuse and specific support.

Specific support is based upon satisfaction with the outputs or policies of the political system. Diffuse support, on the other hand, is independent, at least in the short term, of satisfaction with the outputs of the political system. Instead, diffuse support is a "reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed" (Easton 1964, pg 273). Thus, diffuse support is essential to accomplishing the second essential variable of political life – "the ability to ... induce most members to accept those allocations as binding, at least most of the time". One cause of a loss of diffuse support is a continued and sustained period of dissatisfaction with the outputs of a political system, and the relationship between diffuse support and output dissatisfaction – especially for the U.S. Supreme Court - has received much attention (Gibson, Caldeira and Spence 2003; Bartels and Johnston 2013).

Easton identifies political cleavages and political disputes that refuse to disappear as a source of both volume and support stress. It is in his discussion of this source of stress where it becomes apparent why both an institution of conflict and an institution of de-politicization are required for a properly functioning political system. Persistent political disputes and political cleavages cause support stress because new issues combine with the existing cleavage to add "fuel to the fires still smoldering from past controversies ... [and this] helps to reinforce, or intensify and polarize any existing cleavages" (Easton 1964, pg 261). As these cleavages intensify this causes a loss of support because as this same issue appears over and over again,

“the controversy surrounding an issue may leave a deposit of bitter hostility among the participants” (Easton 1964, pg 260).

An inability to remove issues from the active political debate also leads to volume stress. While old issues keep circulating, new issues come to the forefront and thus new demands are made on the system. Without some mechanism to remove issues from the political discussion, volume stress through the accumulation of new demands on top of the persistent old ones is almost inevitable. When thinking about this in Easton’s terms, it is a case where the political system processes an input and creates a policy output. However, this policy output creates what Easton called a feedback loop and subsequently creates a new demand input on the system. An example of this can be seen in the recent health care bill where even though a bill was passed by Congress, the Republican opposition still calls for its repeal. Another example is the issue of abortion where the U.S. Supreme Court announced a decision decades ago, but all institutions of American government must deal with this continuing and long-lasting issue conflict constantly. Easton summarizes what would happen in the case of “issue immortality” or where divisive issues are continually kept alive and never removed from the “arena of controversy”:

“If no issue could be withdrawn, the overflow effect could lead to a combining of issues of such an explosive character that the resulting cleavages could not help but destroy a system. This possible outcome would not stem only from the presence of an excessive number and variety of issues. It would also arise from the alignment of antagonistic support groups implicit in the notion of cleavage. In this speculative case of issue immortality, the stress of excessive numbers and variety of issues would link up with stress from the increasing hostility among support groups” (Easton 1964, pg 262).

According to Easton, the legislative process is unable to remove issues from the “arena of controversy” and may actually make things worse. He compares solving a dispute through the legislative process to solving a dispute through violence.

“In both cases, whether it is that of violence or legislation, the ability to shape the outcome depends in large part on the effective support one can mobilize on one’s behalf. The nature of

the process conduces to the development and aggravation of the cleavages, even if in different degrees. From the smallest non-literate system to the most developed modern society, the resolution of disputes in these two ways leads to the alignment of members of the system on different sides of the issues. Cleavage is assumed and, in part, encouraged by these processes for settling differences” (Easton 1964, pg 264).

As Easton notes, the legislature is inherently a place of political conflict and thus cannot be used as a way to defuse political conflicts and remove them from political discussion.

He identifies three ways that can be used to remove issues from the political discussion and decrease the intensity of potentially system-disrupting cleavages. The first is a tacit agreement among the political elites to keep a certain dispute outside the arena of politics. This is arguably what occurred with the slavery issue in the party systems of the early United States. Each of the major political parties contained both pro- and anti-slavery factions, and because politics was party-centered no political party would move forward on an anti-slavery agenda. It wasn't until this tacit agreement was broken, and the Republican Party formed with an anti-slavery agenda did slavery change from a latent conflict to an active one that could create substantial political instability and eventually civil war (Aldrich 1995). As illustrated by the slavery issue, the ability of this method to keep divisive and system-disrupting issues off the political agenda is limited. If some faction can gain advantage through the exploitation of a latent issue cleavage, eventually it will be used to gain power.

It is in the other two methods of de-politicizing issues where it becomes apparent why a political system must act as a team of institutions. These two methods emphasize the special role that courts play in de-politicizing issues and removing those issues from the arena of political discussion. The first method is through the creation of a constitution that forbids the government from becoming involved in certain areas. Easton does not explicitly associate this mechanism with a special role for courts, but for the most part, in the American system it is generally agreed

that the judicial system has the last word in the meaning of the Constitution (Whittington 2007). By interpreting the meaning of the constitution, the judicial system determines what areas are off-limits and what areas can be part of the political discussion.

Easton's third type of de-politicizing response concentrates on the unique character of the decision-making process for judicial institutions. Easton describes the legal process as something "that takes an existing controversy, removes it from the open political arena, and siphons it through special channels so that the effects of the cleavage are controlled" (Easton 1964, pg 263-264). Easton recognizes that the judicial decision-making process still involves two sides with a winner and a loser, but the degree of discontent is reduced in part because the procedure used to make decisions is regularized and the decision rules encompass ideas of justices and equity.¹ Whereas the legislative process is compared to violence, Easton describes the judicial process as "a stylized but pacific jousting match" (pg 264).

Separate Institutions of Conflict and De-Politicization

Easton's analysis shows that there are two dynamic forces at work in any political system – a process that builds conflict and a process that defuses or de-politicizes conflict. The processes that build conflict are somewhat self-sustaining, and without some outside interference conflict will continue to build upon itself until the intensity of cleavages or the sheer number of crises leads to an ineffective political system and eventually political instability. The second process of de-politicization is the outside interference that defuses conflicts before they overwhelm the political system. Each of these processes is essential to the political system, and in the optimal situation, each process will predominately occur in a separate political institution. In other words, every political system needs an institution of conflict and an institution of de-politicization that

¹ This idea parallels Tyler's (2006) concentration on procedural fairness as a major determinant of legitimacy attitudes.

defuses these conflicts. In the American system, the judiciary is the institution of de-politicization while the legislature (and to some extent the executive) is the institution of conflict.²

Political conflict and cleavages have been characterized, thus far, as something negative that lead to an ineffective political system and political instability. However, political conflict is an inevitable part of democratic politics, and an essential part of what legitimizes democratic political systems. Another way of characterizing political conflict is people having input and a voice in how the political system operates. The legitimacy of any democratic system is based on government policy representing the view of the majority and achieving this through free and fair elections (Lindberg 2006; Goodwin-Gill 2006; Manin 1997; Dahl 1989). Because elections are both the epitome of political conflict and the main source of democratic legitimacy, some political conflict is required for a democratic system to be perceived as legitimate. The mass public may dislike the conflict (Hibbing et al. 1995), but what causes this disliked conflict – elections and the ability to have a voice in the political system – legitimizes the political system. It is impossible to separate the conflict from the legitimizing processes. Dictatorships are only type of system where political conflict can be avoided and in those political conflict is replaced by violent conflict and repression. Every type of system has some sort of conflict. The type of conflict just varies by the form of political system.

Past research has shown that fair elections in advanced Democratic systems increase the public's overall support for the system. Finkel (1987) uses a panel data set from West Germany in 1987 to show that participation in an election increases regime support. Rahn, Brehm, and

² The executive branch is a hybrid institution that is both an institution of conflict and an institution of de-politicization. In areas of domestic policy, its role is similar to that of the legislature where issues are fought over, but in the area of foreign policy it sometimes acts like an institution of de-politicization that makes authoritative decisions that most of the country feels obligated to follow.

Carlson (1999) show that social capital – which is associated with regime support – increases over the course of an election. The legitimizing effect from elections though is not equal across the population. Anderson et al. (2005) provide a thorough analysis across multiple countries and time periods demonstrating that elections increase support for the regime for election winners to a much greater extent than for the losers, and that the winner-loser gap can be systematically predicted (see Banducci and Karp 2003; Craig et al. 2006 for other studies showing a winner-loser gap). The existence of a winner-loser gap though does not necessarily mean that losing an election decreases support for the regime. It could mean that the losers in an election do not exhibit as large an increase as the winners. Esaiasson (2011) examines 36 elections across 8 different countries with established democracies and finds that losing an election leads to an increase in support much more often than it leads to a decrease. When it does lead to a decrease, the negative reaction is associated with perceived violations of democratic norms.

For most ordinary citizens, elections are the best if not only time in their political life where those who control the political system will hear their voice. Even if their side loses, they were still at least able to have some input into the system through the expression of their opinion. Psychology research has shown that these so-called “voice effects” or the ability for people to express their opinion to the relevant decision-makers substantially increases the perceived fairness and legitimacy of a decision-making process (see MacCoun 2005 for a review). The ability of people to voice their opinions whether through activism or the vote is the bedrock of democratic legitimacy, but this ability also inevitably leads to conflict that could if left unchecked cause political instability.

Elections are not a mechanism that can be used to defuse conflict and de-politicize issues because they have the exact opposite effect. To win elections, political elites must create conflict

by further politicizing existing issues or finding new issues to politicize. For example, Miller and Schofield (2003) have a model of partisan realignment in which vote-maximizing candidates choose to emphasize new issues in an attempt to grab disaffected voters. By emphasizing new issues, candidates create additional political conflict. It is the role of the judiciary to act as the institution of de-politicization that defuses these conflicts before they begin to impact the effectiveness of the political system. The reason the judiciary is able to depoliticize issues and defuse conflicts is precisely because the mass public (at least for appointed courts) do not have a direct voice in how the judiciary make decisions. If the mass public were given a voice it would turn the judiciary into another institution of conflict because conflict necessarily follows when the public is allowed to express their voice.

Each type of institution fulfills a distinct role in the political system. The institution of conflict allows public to have a voice in the system during elections. Without this ability, a democratic system would not meet the basic requirement of representing the public's views through free and fair elections. The institution of de-politicization steps in to defuse conflicts and de-politicize issues before they threaten the effectiveness of the system. Without an institution of de-politicization, political conflict and cleavage would eventually overwhelm a political system. These two types of institutions must be kept separate because an institution of de-politicization cannot be effective if people are given a voice through elections in the decision-making process of the institution.

If it is true that both institution types are required for a properly functioning and self-sustaining democratic system that leads to a potentially troubling conclusion. The institution of de-politicization defuses conflict because it is an inherently undemocratic institution where the public and the outside world have little voice and little control in the decision-making process.

This means for a democratic system to operate effectively some aspect of it must be at some level inherently undemocratic.

Many scholars have pointed out the undemocratic nature of allowing nine unelected people (in the case of the U.S. Supreme Court) to overturn the decisions of a body elected by the majority of the people. Bickel (1986) called judicial review “a deviant institution in American democracy” (pg 17). More recently Waldron (2007) said judicial review “is politically illegitimate ... By privileging majority voting among a small number of unelected and unaccountable judges, it disenfranchises ordinary citizens and brushes aside cherished principles of representation and political equality” (pg 1353, see Kramer 2004; Tushnet 1999 for others attacking judicial review as illegitimate). While scholars may concentrate on the lack of democratic legitimacy, this same concern does not seem to permeate the mass public. The same American public that overwhelmingly supports bedrock democratic principles (McClosky and Zaller 1984) also considers the U.S. Supreme Court and its power of judicial review as a highly legitimate institution and practice (Caldeira and Gibson 1992; Gibson, Caldeira and Baird 1998). In fact, the U.S. Supreme Court has higher levels of support than the other elected institutions of government (Hibbing and Theiss-Morse 1995, 2002). The reason the U.S. Supreme Court maintains such high levels of support and legitimacy while at the same time flouting basic democratic values is that the Court’s legitimacy is based on something much different from the democratic value of representation that forms the basis of legitimacy for elected branches.

Two Types of Legitimacy

The idea that political legitimacy requires the consent of the governed goes back to the beginnings of modern political philosophy with John Locke, but this is not the only source of legitimacy for political institutions. More recently scholars have begun to concentrate on the link

between perceived legitimacy and perceptions of the process that institutions use to make decisions. The reason for the U.S. Supreme Court's high esteem among the mass public is commonly thought to be the way the Court makes its decisions (Casey 1974; Scheb and Lyons 2000; Tyler and Rasinski 1991; Ramirez 2008). Gibson and Caldeira (2011) posit that the court is perceived as legitimate because the justices are perceived as using a principled decision-making process. Their empirical evidence shows that people who perceive judges as "politicians in robes" that make decisions in a self-interested and strategic manner attribute less legitimacy to the Court. Hibbing and Theiss-Morse (2002) examine the effect of process perceptions on support for other parts of the American government and find a strong correlation between process perceptions and legitimacy perceptions.

These two forces – perceptions of decision-making process and representation through elections – provide two distinct sources of legitimacy, and different types of institutions should rely on these two sources to varying degrees. For an unelected institution like the U.S. Supreme Court that is inherently undemocratic, it is unable to predominately rely upon legitimacy derived from elections. Instead, this type of institution must rely upon legitimacy based upon perceptions that the institution uses a principled decision-making process.

Both sources of legitimacy appear available for elected institutions, but this may not be the case in practice. While the American public overwhelmingly supports elections, they do not like the conflict that is an inherent part elections and democracy. Hibbing and Theiss-Morse (1995) conclude at the end of their extensive and influential study on the public's opinion of political institutions that:

"People do not distinguish between essential democratic procedures and perceived abuses of those procedures ... People do not wish to see uncertainty, conflicting options, long debate, competing interests, confusion, bargaining and compromised, imperfect solutions. They want

government to do its job quietly and efficiently sans conflict and sans fuss. In short, we submit, they often seek a patently unrealistic form of democracy” (pg 147).

Since people cannot tell the difference between abuses of democracy and the conflict inherent in democracy, an institution of conflict will almost inevitably be perceived as using an inappropriate and disliked decision-making process.

The previous literature comparing attitudes toward a legislature and a court concentrates on the difference between the magnitudes of each institutions support – i.e. whether people feel more positive or negative about the institution (Price and Romantan 2004; Richardson Jr, Houston and Hadjiharalambous 2001; Hibbing et al. 1995, 2002). Some studies more beyond this and examine whether courts are more persuasive than legislatures, but even here, the court is predicted to be more persuasive because it is seen as more legitimate or in a more positive light (Bartels and Mutz 2009; Gibson, Caldeira and Spence 2005).

This concentration on the variation in the magnitude of support overlooks the most fundamental difference between two types of institutions. A legislature is an institution of conflict with legitimacy based predominately on elections. A court (at least one with lifetime appointments) is an institution that is inherently undemocratic with legitimacy based predominately on principled decision-making. The differences between the legitimacy of a legislature and that of a court is much more fundamental than just some point on an index of legitimacy perceptions. It is of a completely different character, plays a different role in the political system and affects the mass public in a fundamentally different manner. Even if a legislature and a court were seen as equally legitimate, they would still not be treated the same by the public and would not affect the public’s attitudes and actions in the same manner.

The respective legitimacies of these two types of institutions – one of conflict and one of de-politicization - operate in a manner that is appropriate for their respective institution with each

having different strengths that complement each other. The legitimacy of an elected legislature is able to withstand the onslaught of negativity caused by the necessity of people having a voice in its operations. The legitimacy of an appointed court is better able to induce people to accept its decision as final and defuse political conflicts before they overcome a political system. It is only through their combined efforts that a political system can allow people to have a voice in its operations while not allowing the conflict inherent in that voice to destroy the political system. Thus, it is only when a legitimate institution of conflict and a legitimate institution of de-politicization operate as a team that a political system can function effectively.

The Multiple Properties of Legitimacy

To understand how these two types of legitimacy differ requires moving beyond a simple conception of legitimacy as something that varies along one dimension from opposition to support. Below I define three different properties or dimensions along which a legitimacy attitude can vary.

- 1) The *magnitude* of a legitimacy attitude is the amount of legitimacy attributed to an institution.
- 2) The *effectiveness* of a legitimacy attitude is the degree to which the magnitude of legitimacy attributed to an institution is converted into acceptance of specific decisions.³ The acceptance of a decision does not require agreement with the decision. It only requires “citizens to respect (a decision), to cease opposition and get on with politics (Gibson et al.

³ This study concentrates on how legitimacy affects acceptance of decisions rather than agreement with decisions. For this reason, this property is named effectiveness and defined in terms of acceptance judgments. Another possible property of legitimacy is its persuasiveness. Persuasiveness is defined as the degree to which the magnitude of legitimacy attributed to an institution is converted into *agreement* with the policy implications of specific decisions. A persuasive legitimacy is one that enables the Court to act as a “Republican Schoolmaster” (Franklin and Kosaki 1989; Johnson and Martin 1998; Hoekstra and Segal 1996; Hoekstra 1995; Bartels and Mutz 2009).

2005 pg 188).” Thus, if an institution’s legitimacy causes people to accept a decision on an issue that is the equivalent of defusing and de-politicizing an issue conflict.⁴

3) The *stability* of a legitimacy attitude is the degree to which the magnitude of legitimacy attributed to an institution resists the negative influence of displeasing decisions.⁵

The two types of legitimacy may differ on their magnitudes, but this is not something inherent about the two types of legitimacy. The magnitude of legitimacy for an institution of conflict may be high or low, depending on how people feel about the conduct of elections. The magnitude of legitimacy for an institution of de-politicization may be high or low, but this is dependent on whether people perceive the institution as using a principled decision-making process. The two types of legitimacy though are inherently different on the other two properties of legitimacy, and it is because of these inherent differences that the two types of institutions are able to fulfill their roles as institutions of conflict or de-politicization.

An institution of de-politicization must defuse conflict and cause people to accept its decision as final. By doing this, they prevent the feedback loop in which the outputs of a political system in turn create more demands. It is through this loop that political cleavages spiral out of control and reduce the ability of a political system to operate properly. Legitimacy derived from principled decision-making is high on the property of effectiveness. Because it is high on effectiveness, this type of legitimacy is able to defuse conflict and cause acceptance. This is the unique strength of this type of legitimacy, and its major contribution to the team of institutions.

⁴ I use the term acceptance because the previous literature on this topic talks about acceptance or acquiescence to an institutional decision rather than the de-politicization of an issue.

⁵ This study concentrates on whether displeasing decisions lead to a decrease in legitimacy. However, another possible property of legitimacy is the degree to which pleasing decisions lead to an increase in legitimacy. I expect these two aspects of stability will have different influences.

Legitimacy derived from elections is low on the property of effectiveness. This type of legitimacy does not come with the same obligation to accept as legitimacy derived through principled decision-making. Elections are based on the idea that a person votes for a candidate that will for most part do as the voter desires. If that candidate does not, a citizen has the right and is encouraged to vote for a different candidate in the next election that will reverse the displeasing decision. Institutions of conflict operate on a principle of majority representation. If through elections the majority changes the policy of the government should also change. If this doesn't happen, the institution of conflict cannot be considered to be living up to the democratic ideal of representation, which is its purpose in the political system. The legitimacy of an institution of de-politicization is high on effectiveness precisely because it separates itself from this conflict and is perceived as something unique and special.

For the property of stability, the relative strength of the two types of legitimacy switches. Legitimacy derived from elections is high in stability while legitimacy derived from principled decision-making is low in stability but only under certain conditions. A stable legitimacy is required because if legitimacy is dependent upon satisfaction with the policy output of an institution that legitimacy becomes unable to fulfill its role. Legitimacy is important precisely in those times when people disagree with an institution's decision. People do not take to the streets to protest a law or decision with which they agree. Additionally, if legitimacy decreased every time someone disagreed with an institution's decision, that institution's legitimacy would not long survive. In the long-term, an institution with a high magnitude of unstable legitimacy is little better off than an institution with little legitimacy. The only method available for the institution to maintain its high level of legitimacy is to create policy outputs that the mass public agrees with. The problem is that for almost any issue some portion of the mass public will

disagree with an institution's decision, and thus an unstable legitimacy will inevitably decline as its releases more and more decisions because some portion of the population will disagree with each and every one these decisions.

Legitimacy derived from elections is stable because issue conflict is inherent in the concept of elections. Elections pit two sides (at least in America) of the political spectrum against each other. The winners of the election are allowed to implement their policy agenda, and the losers become the loyal opposition that waits until the next election for their chance. If the loyal opposition wins, they are given the chance to repeal the previous government's policies and implement their own. Elections are a mechanism to allow government policy to be representative of the majority view, and as long as the population buys into this democratic ideal, which almost all Americans do (McClosky et al. 1984), displeasing policy will not lead to a reduction in legitimacy.

The dynamics affecting when legitimacy derived from principled decision-making is stable are much different. This type of legitimacy should be stable as long as people perceive the institution as using principled decision-making. Gibson and colleagues (2009, 2003a) propose a shirking mechanism that explains why displeasing decisions will not affect the legitimacy of an institution like the U.S. Supreme Court. Under this shirking mechanism, judges blame the principles used to make a decision as the reason for the displeasing decision. In effect, judges say it is not their fault that some decision is not a person's desired outcome. The judges were forced to make that decision because the principles used to make the decision guided them in that direction. By doing this, the institution itself shirks responsibility and takes no blame for the decision. This results in displeasing decision not causing a reduction in perceived legitimacy.

Thus, legitimacy derived from principled decision-making should be stable, as long as that institution is actually perceived as using a principled decision-making process.

Elected Versus Appointed Institutions

So far I have been conflating a few concepts that do not necessarily always go together. I described courts as institutions of de-politicization with legitimacy derived from principled decision-making, and legislatures as institutions of conflict with legitimacy derived from elections. For most of the discussion though the most important distinction between the two types of institution has been whether they are directly connected to elections and the political conflict inherent in elections or disconnected from elections and thus must derive legitimacy through other means like principled decision-making. It is this direct connection to elections that is the true distinction between an institution of conflict and de-politicization and not whether an institution is a court or a legislature. Thus, it is an elected institution of any type that is an institution of conflict that derives its legitimacy from elections and an appointed institution of any type that is an institution of de-politicization that derives its legitimacy from principled decision-making.

Because legitimacy derived from principled decision-making is not something that is inherently attached to the judiciary, this concept can be applied across many different contexts. For example, the bureaucracy and other governmental agencies are also appointed public officials, and their legitimacy should function like an appointed court. These people are supposed to make decisions based on certain principles and the legitimacy of their decisions is based on them following those principles. The Environmental Protection Agency, for example, makes many policy decisions, but these decisions are based on principles and guidelines that are set down in the law. The judicial branch has a similar role, but instead of making decisions on

environmental policy based on the guidelines expressed within the law, the judicial branch is the interpreter of the complete canon of law.

This discussion illustrates an essential point about the functioning of legitimacy derived from principled decision-making. This type of legitimacy cannot survive on its own. It must act within a political system that includes an institution of conflict, and it must act within the constraints provided by that political system. Every appointed institution has a specific role that it is designed to fulfill, and if that institution goes beyond its specified role, no decision it makes would be accepted and it would not be able to defuse any issue conflict. To reuse the EPA example, even if the EPA used an exceptionally principled decision-making process to increase income taxes that decision would not be considered legitimate because the EPA went beyond its jurisdiction. The judiciary is uniquely situated as an institution of de-politicization because it has broad jurisdiction and is able to rule on almost any issue. Its constraints are more procedural than based on any constraint on issue domain. The judiciary must wait until an appropriate case comes before them, but since interest groups commonly use the judiciary as a forum to advance their policy goals, courts will have the opportunity to rule on almost any political controversy at some point.

State Judicial Elections as a Test Case

The remainder of this book is an in-depth empirical examination of the multitude of differences between the legitimacy of elected political institutions and appointed political institutions using survey and experimental data. In this examination I want to be able to directly pinpoint the effect of elections on the multiple properties of legitimacy. One possible approach would be to compare the legitimacy of the U.S. Supreme Court to the legitimacy of the U.S. Congress, but this has fundamental flaws. These two institutions vary on many other dimensions

than the existence of a direct electoral connection. One institution interprets laws and the other passes new ones. One institution is composed of two chambers with a total of 535 members while the other has only 9 members who are all on one court. Members of one institution continually make personal appearances in the media while the members of the other make the occasional speech that rarely makes it into the news. The list could go on and on.

The best test of the effect of elections on the properties of legitimacy would be to compare identical institutions with the only difference being that one is elected and one is appointed. This ideal case is impossible, but the supreme courts for the 50 American states offer something that comes close because some of these courts are elected and some are appointed. This allows a comparison of the legitimacy of an appointed court to the legitimacy of an elected court, which pinpoints the effect of elections to a much greater extent than comparing the U.S. Congress to the U.S. Supreme Court. To make sure that the effect of elections on the legitimacy of courts is not something unique to courts, I compare the legitimacy of state legislatures to the legitimacy of elected and appointed courts. If the effects I find are caused by an inherent difference between the legitimacy of elected and appointed institutions, the legitimacy of an elected court should have same properties as the legitimacy of an elected legislature.

The remainder of the dissertation will proceed in the following manner. Chapter 2 provides an overview of the different judicial selection methods used by state supreme courts in America and introduces a new method for categorizing states based on a continuous one-dimensional continuum of election salience rather than placing them in four discrete categories. It also describes the nationally representative survey experiment used to test the effect of elections on legitimacy and the basic analytical approach used in later chapters. The next four chapters each examine how elections affect one aspect of legitimacy. Chapter 3 examines the

direct effect of elections on the magnitude of legitimacy. Chapter 4 examines the effectiveness of legitimacy. Chapter 5 examines the stability of legitimacy. Chapter 6 moves from state to federal institutions and provides an experimental test of how perceptions of principled decision-making affect the multiple properties of the legitimacy of the U.S. Supreme Court.⁶ The final chapter summarizes the findings and makes some conclusions about the implications of these findings.

⁶ In a potential book version of this, I think it would be a good idea to have an additional chapter that uses an experiment to look at the legitimacy of the U.S. Congress. I would do some experiment that manipulates democratic values, election fairness, corruption or something along those lines and see whether this affects the stability of legitimacy. That way I have the big study showing elections fundamentally change legitimacy, and then have more in-depth experimental demonstrations of the properties of these two types of legitimacy. It would also apply it to federal institutions that more people will care about.

Chapter 2 – Judicial Selection Methods and Election Salience

The variation across the 50 American states in how they select judges is quite astounding and complex. Some states use elections, some states use appointment systems and some states use a hybrid system called the Missouri Plan. To make it even more complex, some states use one system for appeals courts and another system for trial courts. Generally, the literature on state courts concentrates on state supreme courts and have simplified this complexity into four different categories. The first category is appointment systems where some other public official appoints the judge. The other three categories include some version of an election. In a system called retention elections, the judges are initially appointed but after the end of their term they face a retention election. Rather than being a competition between multiple candidates, the voters instead are given the choice of allowing the judge to stay on the bench for another term or removing that judge from the bench. If they remove the judge, someone else is appointed in their place. The final two categories involve competitive elections between two or more candidates. In some states, a partisan label appears on the ballot, and these are called partisan elections. In other states, no party label appears on the ballot, and these are called non-partisan elections.

Within each of these categories variation still exists. The length of term in appointment systems varies from 6 years to life terms, and different officials make the appointments in different states. A few states have judges engage in competitive elections for an open-seat, but once they are incumbents, they run in retention elections after winning their first competitive

election. To make things even more complicated, two states – Michigan and Ohio – have non-partisan general elections, but the judges are nominated in partisan primaries. Then there is Indiana, which uses every selection method in some way. The Indiana Supreme Court uses the retention election system in which the judges are initially appointed and then must face retention elections. For the trial courts, two counties use retention elections, two counties use non-partisan elections and the rest use partisan elections. While it can be quite difficult to categorize the different states firmly into one of these four categories – appointment, retention, non-partisan and partisan – the literature has come to a general agreement about which states should fall into which category. In this work whenever I do categorize the states into discrete categories, I will follow the coding convention established in Bonneau and Hall (2009),⁷ However, I also develop a new method of categorizing the states along a continuous continuum called election salience.

Judicial Selection Method and Perceived Legitimacy

Each of these selection methods is an attempt to balance the two goals of accountability and independence. The competitive election systems emphasize accountability while the appointment systems emphasize independence from public opinion. The retention election system provides a middle ground that allows some accountability through retention elections but keeps some degree of independence because of the nature of these elections (Bonneau and Hall 2009). Many judicial organizations like the American Bar Association (Carlton Jr. 2003), state judges and even former U.S. Supreme Court justices (O'Connor 2007) have pushed for movement away from competitive elections toward other systems that give judges more independence from public opinion. The arguments concerning whether accountability or independence should be emphasized are numerous and compelling on both sides, and my

⁷ This coding convention puts Michigan and Ohio into the partisan election format. It also bases the coding on the initial way in which judges are elected. Thus, a state where judges are initially elected using partisan elections but use retention elections after that fall into the partisan election category.

analysis cannot speak to many of these because to some extent they are purely normative about the proper role of a judge. However, one empirical argument that is commonly used as a justification to move away from competitive elections is that elections politicize the judiciary and lead to a loss of legitimacy. It is in that debate that my empirical and theoretical arguments can contribute.

The empirical findings on the relationship between judicial elections and legitimacy somewhat contradict each other with cross-sectional studies finding something different than panel-based studies that look at change over an election cycle. In cross-sectional analyses, citizens in states with partisan elections have more negative attitudes toward the state supreme court and see them as more politicized (Benesh 2006; Wenzel, Bowler and Langque 2003; Cann and Yates 2008; Jamieson and Hardy 2008). While at the same time, other research using panel data shows that the legitimacy of courts increase over an election period (Gibson, Gottfried, Delli Carpini and Jamieson 2010; Gibson 2012). This is true even when taking into account the negative and politicizing effects of campaign activity like troubling campaign contributions and attack ads (Gibson 2008a, 2008b, 2009, 2012).

There are some possible explanations for these contradictory results like different measures and study designs⁸, but one flaw with all them is that they fall into the trap of examining solely variation in the magnitude of legitimacy while ignoring its potential effects on other aspects and properties of legitimacy. By doing this, they ignore the most important effect of elections on the legitimacy of courts. Elections transform legitimacy from one derived from principled decision-making that is high on effectiveness and sometimes low on stability to a legitimacy derived from elections that is low on effectiveness and high on stability. A fruitful

⁸ The beginning of chapter 3 includes an in-depth examination of these results. One major difference between the studies is that the cross-sectional studies use measures tapping into specific support while the panel studies use measures tapping into diffuse support.

way of thinking about legitimacy is as composed of a substance and to imagine some institutions having more of that substance than others. The existing studies on elections and legitimacy examine what causes the mass of the substance to increase or decrease. This is a fruitful, valid but incomplete examination of legitimacy. Elections do more than add or subtract from the pile of legitimacy. They change the essence of the substance that composes the pile. In effect, elections achieve the goal of the ancient alchemist in that they turn one element into another, but instead of turning lead into gold, elections change legitimacy from a substance composed of principled decision-making to a substance composed of elections.

Thus, even if elections increase the overall legitimacy of courts that does not necessarily mean that judicial elections are a positive for the political system. The way that elections transform the legitimacy of courts does not necessarily make courts a weaker institution, but it does make the team of institutions making up the political system weaker. By electing judges, the political systems of these states lose their dedicated institution of de-politicization and instead are composed completely of institutions of conflict. Just like basketball teams need both quick points guards and tall centers and American football teams need 300 pound lineman and lightning fast receivers, every political system need both an institution of conflict and an institution of de-politicization.

Variation in Election Salience

As the beginning of this chapter attests, it can be difficult to categorize the different types of judicial selection methods used by states. This can be seen in the variety of institutional variations codified in law like some states having both competitive and retention elections depending on the circumstance, but the idiosyncratic nature of some states goes beyond what is codified in law. For example, in some states a norm has developed where judges retire before the

end of their term to allow the governor to appoint a new person who can run as an incumbent in the next election. Additionally, some states have a tradition of hard-fought and contentious judicial elections while in other states all judicial elections are low-salience affairs that the public rarely hears about.

This variation is a problem for studying the effects of these different institutions on public opinion because the states must be split into separate categories in some manner, and the number of categories must be relatively small to make the analysis feasible. The problem is compounded by the fact that many if not most people do not know how judges are elected in their state. In a nationally representative survey conducted in 2008 by James Gibson, 45 percent of the respondents replied they did not know whether judges are appointed or elected. When looking specifically at those states with competitive elections, only 34 percent correctly replied that judges were elected in their state (Gibson 2012, ch. 4 footnote 13). Any study of the effect of elections on the perceived legitimacy of state supreme courts must deal with the many types of elections and the lack of knowledge.

To solve this problem I use a concept called election salience that represents the degree to which the people in a state associate the state supreme court with elections. This concept is essential to understand and examine because a court's legitimacy will only function like legitimacy derived from elections if those elections are salient and known to the public. If an election occurs and no one knows about it, it cannot affect the public's attitudes.

In states without salient elections, the courts legitimacy will function like legitimacy derived from principled decision-making because the default response in the absence of any contrary information will be to associate courts with appointment systems. The highest profile court in America by far is the U.S. Supreme Court, which is appointed. Because of this, people

who are unsure will most likely associate courts with appointment rather than election-based selection methods. While my analysis will always first look at the differences between the four traditional categories of judicial selection method, the main analyses examine the differences along a continuous continuum that ranges from states with highly salient appointment systems and states with highly salient election systems. It is this continuum of election salience rather than the four traditional categories of selection method that determines whether the legitimacy of courts functions like that derived from principled decision-making or that derived from elections.

A Multi-Method Approach to Studying Judicial Elections and Legitimacy

Most of the empirical analysis in this book comes from one nationally representative survey that fulfills multiple roles. It allows me to examine how election salience changes the magnitude, determinants, effectiveness and stability of legitimacy. Additionally, it includes an experimental manipulation of election salience. Because election salience is both measured and manipulated, I can use cross-sectional analysis to determine the “real-world” effects of election salience and use the experimental manipulation to make more confident claims of causation. This method of analysis combines the external validity of a cross-sectional analysis on a nationally representative sample with the internal validity of an experiment.

Constructing a manipulation to test the effect of elections on legitimacy is not straightforward because of the impossibility of randomly assigning people to states with judicial elections and states with appointment systems. One possible method is to tell half the sample judges in their state are elected and the other half that judges are appointed. While knowledge of judicial elections is low, a substantial portion of every state will know the judicial selection method used in their state. The analysis of the experimental results would be restricted to the least knowledgeable among the sample. This might bias the results and restrict the ability to

generalize from the results. Another possible option is to tell the subjects that a judge in a different state is making a decision that could affect their area and manipulate the selection method of that judge. Almost none the subjects will know the selection method in a different state, allowing me to be confident in the integrity of the manipulation. This method has a different problem though because subjects will probably react differently to a judge from outside their home state than one from their own state. The subjects have a say – through either direct election or indirectly through electing those who appoint the judges – on who becomes a judge in their own state, and they also have a higher stake in the actions of in-state judges. I cannot be confident that people will react similarly to a home-state judge as they do to a non-home-state judge.

The concept of election salience provides a solution to manipulating elections. It is impossible to manipulate the existence of elections within a state, but it is possible to manipulate the salience of elections within an individual's mind. The experimental manipulation used in this study is to tell those people in states with elected judges that their judges are elected and tell those people in states with appointed judges their judges are appointed. The control condition for all states is to give the subjects no information about their state's judicial selection method.

Study and Manipulation Design

My study relies upon a national survey fielded by YouGov in March 2011 with a weighted stratified sample of 2100 respondents and an embedded experiment. Surveys conducted by YouGov are completed by respondents over the internet on their personal computers. These respondents come from YouGov's panel, which are recruited using advertising and have registered with YouGov as potential survey respondents. They are given points as an incentive to complete the survey that can be redeemed for money or merchandise. Judicial selection methods

are generally put into the four categories of partisan elections, non-partisan election, retention election and appointment systems. Rather than having a sample that is representative of the total United States, the survey used a stratified sample in which each of these four categories are equally represented. The sample is best described as four samples that are each weighted to be representative of the states within that category of judicial selection method. This type of sample is required because the experimental manipulation differs based on the judicial selection method used in the state and an adequate and equal sample size is required for each type of experimental manipulation.

The text for the experimental manipulation briefly describes the judicial selection method used in that state. The text within each category of states is the same with the exception of the name of the institution. The name of the institution varies by state and for most states is simply “(name of state) State Supreme Court “– e.g. Indiana State Supreme Court. For some states, the official name of the highest court is different and in these states that institution name is used – e.g. New York State Court of Appeals. This approach of keeping all text except the name of the deciding institution the same across all states is used in every survey item.⁹

The text for appointment system states is:

The judges on the *(insert institution name)* are appointed to the bench by other public officials of the state government. Once they are appointed to the bench, they serve out their term and cannot be removed unless they are impeached. The length of this term varies from as short as 6 years in some states to as long as life-terms in other states. If the justices do not serve a life-term they must be re-appointed to the bench to continue to serve on the *(insert institution name)*.

The text for retention election states is:

The *(insert institution name)* uses a system called retention elections to determine whether a judge can stay on the court or not. Under this system, after judges become a member of the court they must, after a certain period of time, stand before the public in a retention election.

⁹ Some items within the legislative condition are the only exception. The legislative condition is discussed more below.

In this type of election, the judge is the only candidate, and the public is given the choice of answering yes or no to the question of whether this judge should be given another term on the court. If the public answers yes, the judge stays on the bench for another term. If the public answers no, that judge is replaced on the court by another judge.

The same text is used for partisan and non-partisan election states and is:

The judges on the *(insert institution name)* are elected to the bench in competitive elections between multiple candidates. The process is like any other election held for other types of elected officials. The candidates for the office must apply for their name to appear on the ballot. The candidates then run a campaign asking the people of the state to vote for them. Whichever of the candidates wins the most votes becomes a judge on the court. After a defined term, the judge then must stand for election again.

Assessing the Multiple Properties of Legitimacy

The purpose of this study is to examine the effect of measured and manipulated election salience on four different aspects of legitimacy – its magnitude, determinants, effectiveness and stability. Studying the effectiveness and stability of legitimacy requires presenting the subjects with a court decision. In this study, the subjects are presented with a fabricated court decision on the issue of whether a 16-year-old convicted of murder should be eligible for a life sentence without the chance of parole. They are asked their opinion on this issue and the court always makes a decision that opposes that position. The study proceeds in the following manner:

- 1) Attitudes about perceptions of election fairness, rule of law and awareness of the court are measured.
- 2) The subjects are asked whether courts in their state are elected or appointed. This item is used to create a measure of election salience for each state and individual.
- 3) The subjects are presented with a description of the court case and asked their opinion of it.
- 4) The manipulation is administered.

- 5) Perceptions of legitimacy, perceptions of decision-making process and specific support for the court are measured.
- 6) The decision of the court on the juvenile life sentence is announced. This decision also opposes the subject's stated opinion from step 3.
- 7) Acceptance of the court decision and agreement with the policy outcome are measured.
- 8) The legitimacy items are re-administered. This is combined with the initial legitimacy scale to create a legitimacy change measure.

This study design can be used to assess each aspect of legitimacy mentioned above.

To assess the direct effect of elections on legitimacy, I will use legitimacy measured in step 5. This same measure of legitimacy can be used to examine how the elections change the determinants of legitimacy. I will concentrate on the relative effect of election fairness and perceptions of decision-making process in this section of the analysis. To study the effectiveness of legitimacy, I will examine how elections change the marginal effect of legitimacy (measured in step 5) on acceptance (measured in step 7). Examining the stability of legitimacy requires constructing a measure of legitimacy change and seeing how elections change the degree to which a displeasing decision decreases legitimacy.

Legislature Condition

One condition in the study (1/9 of the sample) changes the institution making the decision from the state supreme court to the state legislature. The proposed effect of increased election salience is to change the fundamental character of the institution's legitimacy. If my theory is correct, the legitimacy of any institution with high election salience - whether it is a court or a legislature - should function in the same manner. Thus, the legitimacy of an elected court should have the same properties as the legitimacy of a legislature. The legislature condition in this study

will be used to test that hypothesis. All the items used in this study were designed to apply to both a legislature and a judiciary with as little change as possible. For virtually all the questions, the only differences between the legislature and the judicial conditions is the name of the institution and how the members of the institution are referred to. The name of the institution in the legislature condition is “(state name) State Legislature”. The members of the institution in the legislature condition are referred to as “Members of the (institution name)” as compared to “Judges of the (institution name)” in the judicial conditions. Chapter 7 examines the legislature condition, and the differences in measurement will be discussed further there.

Measurement of Election Salience

The measure of election salience uses an item that asks whether people think the supreme court in their state is elected or appointed. While this item asks about knowledge, the concepts of salience and knowledge are not exactly the same. Salience is supposed to tap into the degree to which people associate their state supreme court with elections. Another way of putting this is that salience measures how quickly elections come to mind whenever someone thinks of the state supreme court. As I said before, even if people know their state’s court is elected, the default and initial response for many people will be to associate their state’s court with appointment systems because the most salient court in America – the U.S. Supreme Court – is appointed. Because of this, the measure of election salience cannot simply be whether someone says a court is elected or appointed, it must take into account the accessibility of that knowledge. By taking into account accessibility, the measure will tap into the strength of the connection between the state supreme court and elections in an individual’s mind.

Accessibility is a concept that measures whether something is readily available within an individual’s long-term associative memory (Fazio 1995; Krosnick and Petty 1995). The concept

of accessibility has been applied to many different areas including attitudes, schemas and general political orientations. An important finding among this literature is that as a schema or attitude becomes more accessible it has more effect on behavior and judgments (Basilli 1993, 1995; Krosnick et al. 1995; Lau 1989; Bargh, Lombardi, and Higgins 1988). A common method of measuring the accessibility of an attitude is the subject's response latency to an item assessing that attitude or the amount of time it takes the respondent to answer the question (Basilli 1995; Huckfeldt, Levine, Morgen and Sprague 1999). For example, Huckfeldt et al. (1999) measured response latency to ideological and partisan self-identification items, and showed that as the response latencies to these items increases the smaller effect they had on behavior and other attitudes. For example, those people who had an accessible ideological self-identification were more resistant to persuasion and ideology was more constraining on other issue positions. Basilli (1993) compared the relationship between voting intentions and actual voting behavior and found that response latencies to a voting intention item was a better predictor of discrepancies between intention and behavior than an explicit measure of vote intention certainty.

The accessibility of someone's election knowledge is important because even if someone has explicit knowledge that his or her state court is elected if that knowledge is not accessible it would not affect their behavior or judgments. Because in many if not most states judicial elections are a low-salience affair, knowledge about judicial elections will be something that has an extremely low accessibility for most people. Judges during their term in office will rarely if ever concentrate on their status as elected officials. They want to portray themselves as neutral arbiters of the law and concentrating on elections would harm that image. The only time that a connection between elections and the judiciary is apparent are those times when judges must face elections, but except for in rare cases, these elections do not enter mainstream awareness.

The measure of election accessibility uses an item that reads: “Some judges in the U.S. are elected; others are appointed to the bench. Do you happen to know if the judges of the (*insert institution name*) are elected or appointed to the bench?” The subjects were given the answer options of elected or appointed. The response latencies for answering this item were recorded. The subjects were not given a “don’t know” response option because even if they did not have explicit knowledge their guess is still important information. This guess is an indication of whether they generally associate courts with elections or appointment selection systems. The measure of election/appointment knowledge accessibility must take into account two factors – the subject’s answer and the subject’s response latency. Conceptually, this measure should range from high appointment accessibility at one end to high election accessibility at the other with those in the middle having low accessibility for either option. Identifying those at either end of this continuum is simple. At one end are those who responded quickly with the appointment option and at the other end are those who responded quickly with the election option. Identifying the mid-point is not as clear-cut. While conceptually a scale of accessibility contains a zero point, in practice it is impossible to measure this zero point using response latencies because it would be someone who took an infinite amount of time to respond. Because of this the mid-point of the accessibility continuum must be somewhat arbitrarily defined.

Figure 2.1 contains a histogram of the response latencies for the selection method knowledge item where each bar represents the density of responses in a 2.5 second window. The distribution for response latencies usually resemble the log-normal distribution seen in figure 2.1, and this is the reason that response times are usually log-transformed before running any analysis on them (Huckfeldt et al. 1999). At some point on the response latency scale, any additional time spent responding to the question becomes effectively meaningless variation. At this point any

additional time is not a result of accessibility, and instead most likely results from the subject being distracted or inattentive. Examining the figure shows that 30 seconds seems to be where the histogram begins to depart from the log-normal distribution. The bar representing 28.5-30 seconds is the last bar that is larger than every other bar past it. One property of the log-normal distribution like virtually all distributions is that once the peak in density is reached, the density should always decrease after that. Since response latencies caused by accessibility should conform to the log-normal distribution, the variation past this point most likely does not result from variation in accessibility. Thus, a response latency of 30 seconds represents the lowest possible measurable accessibility, and this will be used as the effective zero point on my accessibility scale.

Figure 2.1 – Histogram of Response Latencies for Knowledge of Selection Method

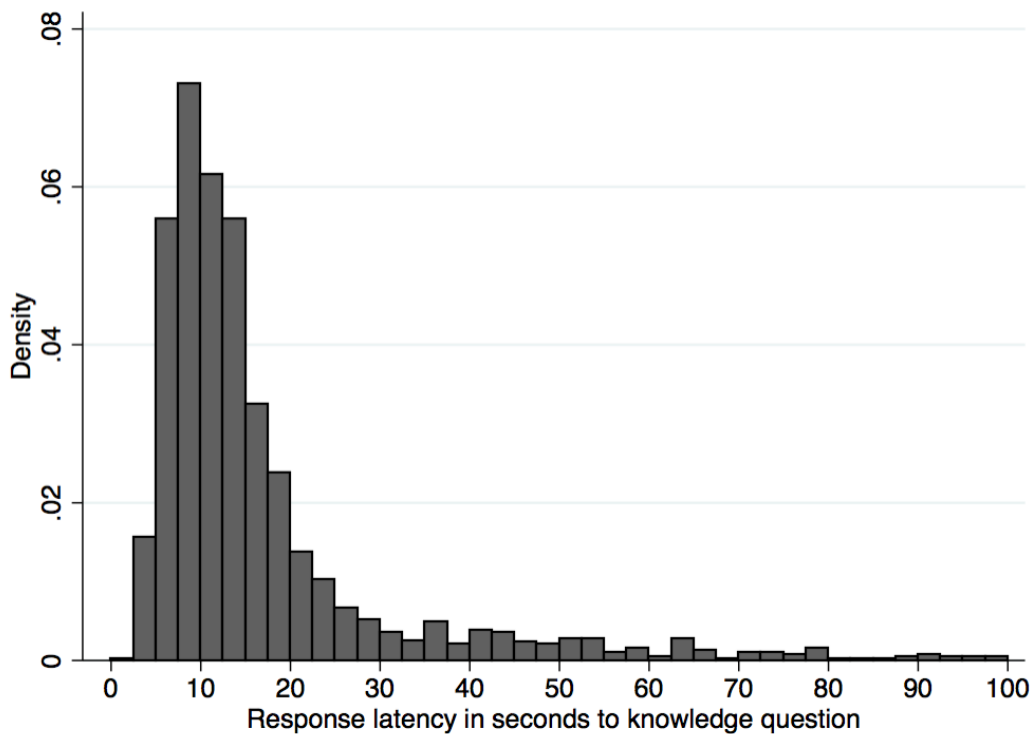
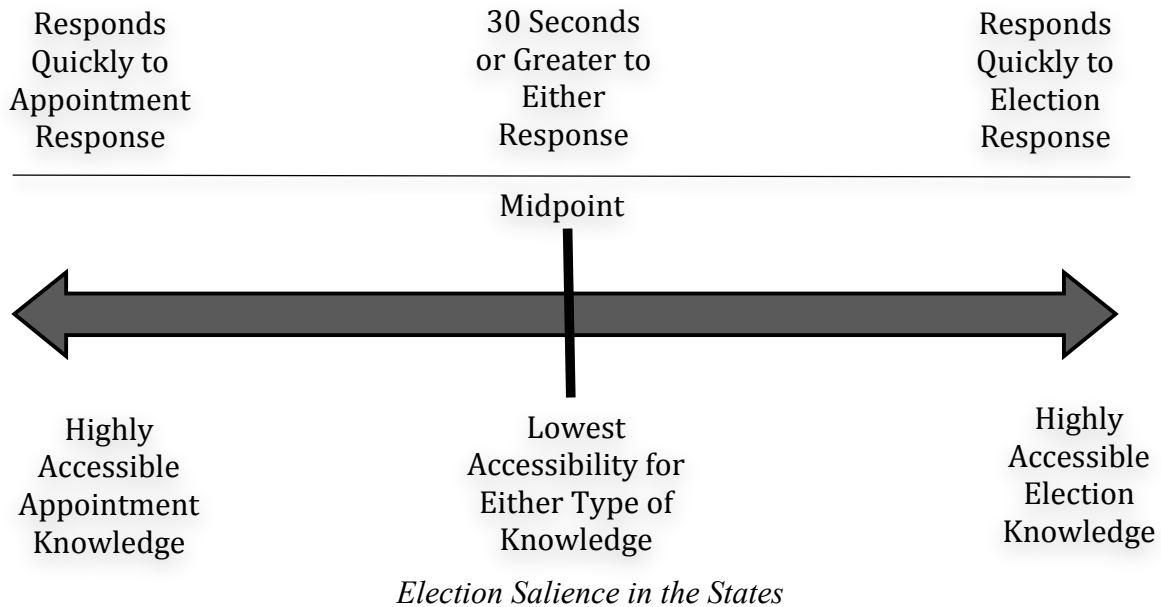


Figure 2.2 displays the conceptual continuum for the accessibility measure along with how this relates to its practical measurement. Those people who respond quickly to the election item are considered as having highly accessible election knowledge. Those people who respond quickly with the appointment response have highly accessible appointment knowledge. All people who take 30 seconds or longer to respond are considered to have extremely low accessibility and are at the midpoint between highly accessible election and highly accessible appointment knowledge. The measure of individual knowledge accessibility is constructed using response times transformed using a natural log. Theoretically, this measure could range from -3.4 or $-\ln(30)$, which is someone who took 0 seconds to respond appointment, to $+3.4$ which is someone who took 0 seconds to respond election. The actual range is -3.15 to 2.96 . Those people who took between 0 and 30 seconds lie somewhere between the extremes and the zero point on the scale. For example, someone who took 5 seconds to respond with election would fall at the 1.61 point on the scale while someone who took 15 seconds to respond with appointment would fall at the -2.7 point on the scale.

Figure 2.2 – Relationship Between Conceptual Accessibility Continuum and Practical Measurement



One major benefit of the election salience concept is the ability to place all judicial selection methods on one continuum from a highly accessible appointment system to a highly accessible election system. There is a vast amount of variation on institutional arrangement and norms within each type of selection method, and this cannot be picked up through the traditional four categories. For example, there is the perennial question of where to put Ohio and Michigan with their partisan primaries and non-partisan general elections, and the just as vexing problem of where to place states that have both retention and competitive elections for the state supreme court. While there is variation within each selection system, there should still be considerable variation between the selection systems. Election salience should be higher where judges are actually elected and lower where they are appointed. Figure 2.3 displays the variation in election salience between the different selection methods. It contains both the percentage of people who

identify their state’s method as an election and the average within each of these categories on the measure of election/appointment knowledge accessibility split by the traditional four categories. The pattern is the same across both measures. In states with competitive elections – partisan and non-partisan categories – the salience of elections is about the same and higher than the other two types of methods. Appointment systems have the lowest election salience and retention elections fall somewhere in the middle. This makes sense because retention elections systems contain both electoral and appointment components.

Figure 2.3 – Election Salience in the Different Judicial Selection Methods

Type of Judicial Selection Method	Percentage that Identifies Method as Election	Average of Election Salience Measure
Partisan Election	.60 (.03)	.19 (.07)
Non-Partisan Election	.61 (.03)	.24 (.08)
Retention Election	.39 (.03)	-.16 (.06)
Appointment System	.20 (.03)	-.58 (.06)

Standard errors are displayed in parentheses

While the pattern between the different categories of selection methods fits expectations, each category is hiding wide variation among the states. Figures 2.4 and 2.5 displays the election salience in each state using the same two measures.¹⁰ Figure 2.4 displays the percentage of people within each state that said their state’s court was elected. Figure 2.5 displays the average level on the individual election/appointment accessibility measure for each state. The states are

¹⁰ South Dakota is excluded because the sample only includes one subject from that state.

split among the four traditional categories of judicial selection method and are shown in order with the lowest at the top and the highest at the bottom. The black bars represent 68 percent confidence intervals and the gray bars represents 95 percent confidence intervals around the means. Also, included in these figures is a summary of the responses to the selection method question among those in the state legislature condition. In this condition, the subjects were asked whether the “members of the (insert state name) State Legislature” were elected or appointed. One thing to note is that an unequal number of people were sampled from each state and as a result the size of confidence intervals around the state predictions varies widely.

The most important thing to note is the wide variation within each of the selection methods. Among retention election states the percentage of people identifying that system as appointment-based ranges from 0 percent in two states to 61 percent in Iowa. This type of variation among retention election states makes sense because this system can be interpreted as either an appointment-based or election-based system. The variation among the other types of states though cannot be explained this way because these systems - at least in their legal institutional arrangement – should easily be categorized as either appointment or election. But even among these states there is still considerable variation. Among non-partisan states the percentage of election responses ranges from 25 percent to 75 percent. Among partisan states the percentage ranges from 27 percent to 77 percent.

Another important pattern shown in Figure 2.5 is that courts in appointment states are more strongly associated with appointment systems than courts in competitive election states (partisan or non-partisan) are associated with election systems. The dotted line running vertically in the middle of Figure 4.5 represents the zero point on the election/appointment knowledge accessibility measure. If a state falls here that state’s selection method is equally associated with

election and appointment systems. Every appointment system state - with the exception of Vermont that has huge confidence intervals because of a small sample – falls on the appointment side of that line, and for most of them the 95 percent confidence intervals do not cross the zero line. This indicates they are significantly associated with appointment systems.

The competitive election states (partisan and non-partisan) fall on both sides of the dotted line. One of those states – Louisiana – is significantly to the left of the zero line, but for the most part, the elections states hover around the zero point on this scale indicating that they are not significantly associated with either appointment or election systems. Seven competitive election states are significantly associated with election systems, but the magnitude of the association is smaller for these states than the magnitude of the association to appointment systems for the appointment states.

One way of showing this difference in magnitude is by looking at the average across all competitive election states and across all appointment system states (see Figure 2.3). In appointment states, the magnitude of the association with appointment systems is .58 while the magnitude of association with elections for competitive election states is .21. This difference in magnitude is statistically significant at $p < .05$. Perhaps most tellingly, only 3 of the 22 competitive election states have an association with elections as strong as the average association with appointments in appointment states. This backs up my earlier assertion that people's initial and default response to how courts are selected is based on the most salient court in the country – the appointed U.S. Supreme Court. In states with competitive elections that are low salience most people will never know that judges in their state are elected. Thus, they will assume based on their knowledge of the U.S. Supreme Court that the court's judges are appointed. For a court to be strongly associated with elections, judicial campaign and electoral activity must bombard

the population, but for a court to be associated with appointment systems requires only the lack of this judicial electoral activity.

The state legislature condition provides a good benchmark with which to compare the elected courts. Using the same method to construct a measure of knowledge accessibility¹¹, the average on the scale within the state legislature condition is .66. This is higher than all except for two of the states – Wisconsin and West Virginia. Thus, it would seem that it is possible for the connection between elections and state courts to be as strong as the one between elections and state legislature, but it is rare. Most states that have competitive elections fall well below the state legislature on the accessibility scale.

¹¹ The item asked used to construct the accessibility measure within this condition asked whether the state legislature was elected or appointed rather than the state supreme court.

Figure 2.4 – Percentage of Election Responses in Each State

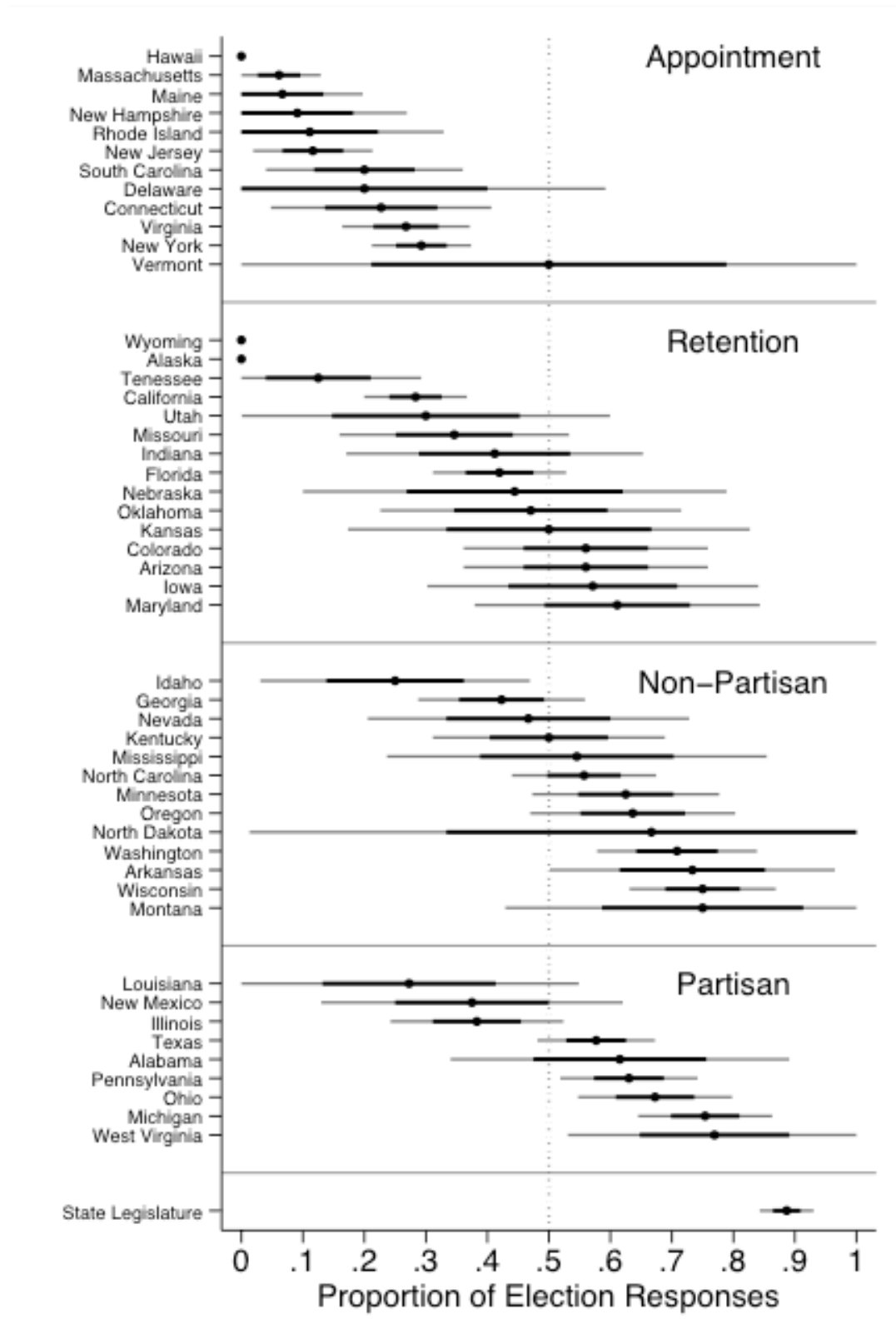
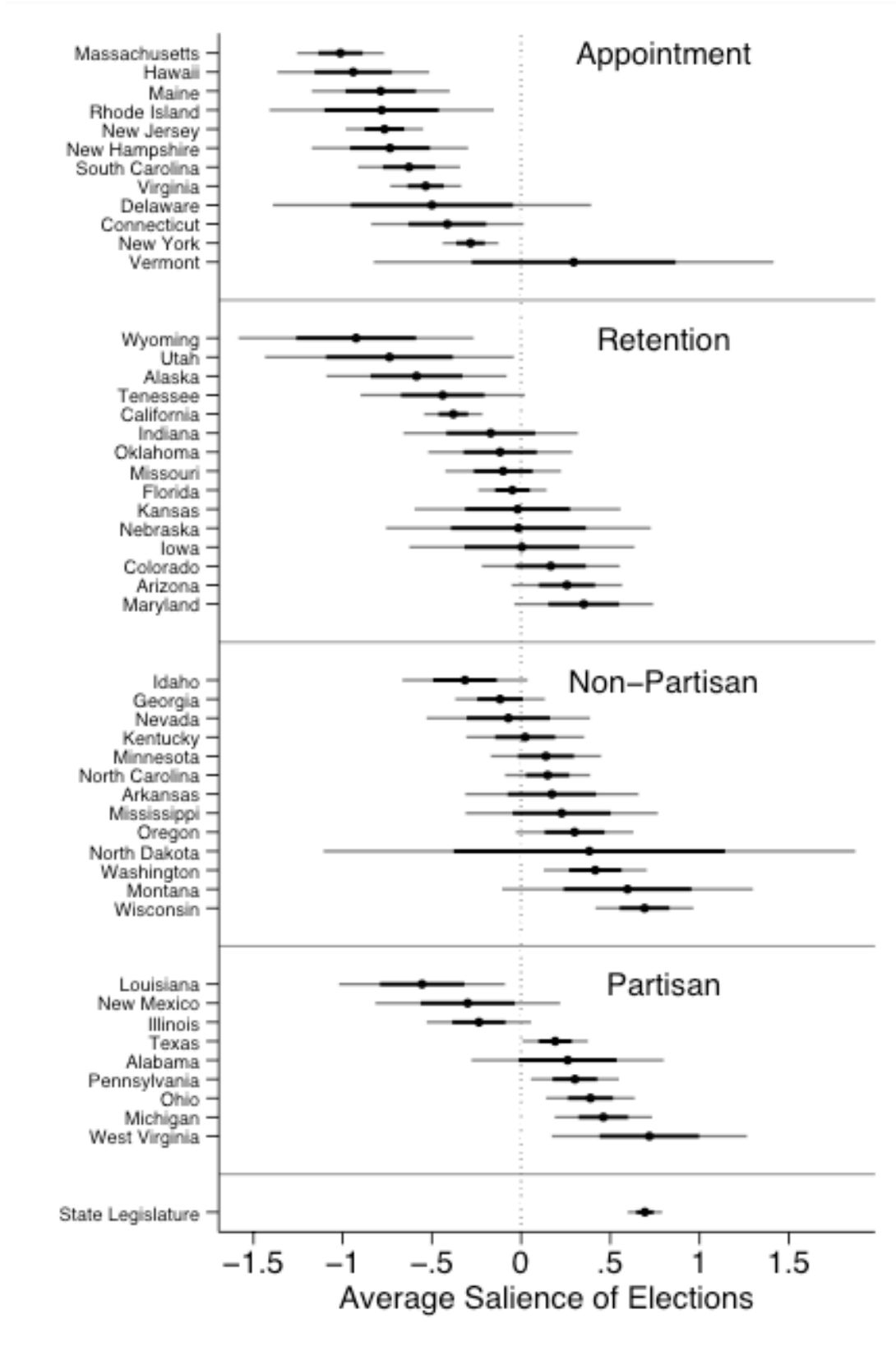


Figure 2.5 – Average Election/Appointment Knowledge Accessibility



Model Design

Modeling data about state-level institutions using a national survey requires taking into account the multi-leveled nature of the data. The survey is composed of 2100 subjects embedded within 50 states. Taking into account the two-level structure of the data is especially important because the people from each state were asked about different institutions. Virtually every model used in the analysis of this study uses a multi-leveled model with a random intercept coefficient that varies by states and that is estimated using ordinary least squares.

Group-Level versus Individual-Level Effects

In multi-level modeling there is a distinction made between group-level and individual-level effects. With a study that has 2100 individuals embedded in 50 states, a group-level effect would be anything measured at the state level – i.e. state-level unemployment or which party holds the governor's office. An individual-level effect would be traditional attitudinal or demographic measures – i.e. an individual's income level or partisan identification. One common method of measuring group-level variables is to use the mean of an individual level variable for everyone within a group. These models are generally referred to as contextual analysis models (Boyd and Iverson 1979; Firebaugh 1978; Raudenbush and Bryk 2002) because they are meant to determine whether it is an individual-level characteristic or an individual's context that affects some dependent variable. This type of model and measurement method has been used extensively in education research to determine whether educational outcomes are related to individual-level or school-level variables (Harker and Tymms 2004; Miller and Murdock 2007; Papaioannou, Marsh and Theodorakis 2004). A classic example would be whether poor educational outcomes are associated with an individual being of low socio-economic status or with an individual being in a school predominately composed of those with

low socio-economic status (Raudenbush and Bryk 1986). In a more recent example, Anderman (2002) examined how individual level psychological outcomes like depression and optimism are related to school belonging perceptions among adolescents at both the individual and school levels. The data for this study came from a national sample, and the school-level belonging variable was an aggregation of all the sampled individuals within each school. Both the group and individual level variables had independent effects on the psychological outcomes.

For my study of the relationship between elections and legitimacy, I will concentrate on the concept of election salience and separating its group and individual-level effects. The measure of election salience at the group level is the mean of the individual-level responses within each state for the appointment/election knowledge accessibility scale (see Figure 2.5 for these means). The aggregation of election salience at the group-level has the effect of changing what that variable represents. At the individual-level the interpretation is fairly simple. It is the association within an individual's mind between his or her state's supreme court and either election or appointment selection systems. At the group-level, this variable no longer represents something about the individual but instead something about the state's political system. This state-level election salience variable could represent many possible things. It could be a proxy variable for the combination of political norms concerning judicial elections, the institutional set-up codified in law, and the history of contentious elections in a particular state. However, it is probably best thought of as representing something about the political culture of a state because to some extent what determines the collective connection between elections and state supreme courts comes from outside the judicial system altogether. It could be a result of how other non-judicial politicians treat courts and the way they speak about courts.¹² All future

¹² An obvious future project is to determine what group and individual-level variables affect election salience. None of the individual variables in my survey would be very interesting, especially since for

analyses examine both the group and individual level effects of election salience on the different properties of legitimacy. Across these analyses the pattern is strikingly clear with the individual-level measure having no detectable effect and the group-level measure strongly affecting the magnitude, effectiveness and stability of legitimacy.

Note on the Sample

The use of internet samples to gather nationally representative samples has been on the rise in political science in part because these samples are much less expensive than traditional phone surveys. One potential problem with internet samples is that they only sample people who have access to the internet. YouGov attempts to counteract this problem by using a sample-matching methodology, and their results suggest they can accurately predict election outcomes (Rivers 2007). Some evidence of the field's confidence with YouGov polls is that the company gathers the data for the Cooperative Congressional Election Study. Papers using the CCES have been published in the best journals in the field like the *American Journal of Political Science* and the *Journal of Politics*.

While people have concentrated on and to some extent moved past the problem of internet sampling, an under-appreciated aspect of the internet methodology is that people are given a financial incentive for completing these surveys. This is the case for both Knowledge Networks and YouGov. This financial incentive is rarely given to respondents for phone surveys. The problem with this incentive is that it sets up a situation where for some people the reason they complete the survey is not to give their opinion but to reap the financial reward. This leads to some people clicking through the survey without actually reading the questions. Every survey

almost all of them my predicted causal pathway has election salience causing them. In the future, I will gather some data like campaign expenditures and characteristic of courts to see how these group-level variables relate to election salience. Looking at the determinants of election salience will help to better explain what this variable actually represents.

needs some method to weed out these people. One method is to include screener questions where the beginning of the question reads normally, but after the first few sentences it says to ignore the previous part of the question and answer this item in a specific way. This type of question makes sure that people are actually reading the instructions rather than quickly clicking through the questions. Berenksy, Margolis and Sances (2012) recommend the use of this type of question when using internet samples to make sure the survey respondents are paying attention. I included such an item following the re-administration of the legitimacy items. The item read “Political scientists are interested in how you process information. To ensure that you processed this piece of information and the previous questions, please click on None of the Above.” The answer options were “Strongly Agree”, “Agree”, “Neither Agree Nor Disagree”, “Disagree”, “Strongly Disagree”, and “None of the Above”. Anyone who failed to click on the “none of the above” option was excluded from my sample. This excludes 12.5 percent of the sample. This large percentage shows the necessity of including these types of “trick” question in all internet surveys completed for a financial incentive.

I include one more restriction on the sample. The subjects must know of the existence of the institution about which they are answering questions. One of the awareness items asks “Would you say you are very aware, somewhat aware, not very aware or have never heard of the *(insert institution name)*?” Those subjects who indicated they had never heard of the institution were excluded from the sample. This excludes 40 additional subjects – slightly less than 2 percent of the sample.

Outline of Data Analysis Technique

In the forthcoming chapters, I will examine how elections affect the magnitude, determinants, effectiveness and stability of legitimacy. Every model - except for a few rare

exceptions that will be noted - is a multi-level model that groups the individuals by state and includes a random intercept coefficient that varies by state. I will examine the variations in the multiple properties of legitimacy in three different ways. First, I will look at how these properties vary based on the four traditional categories of judicial selection methods. Second, I will combine all the categories and see how they vary across state-level and individual-level election salience. The sample for both of these models is constrained to the control condition because the manipulation is designed to change election salience, and thus the measure of election salience – administered prior to the manipulation - would react differently in the control and experimental condition. In the experimental condition, the actual salience of elections would be high even among those who have a low measured election salience. Third, I will examine how the experimental manipulations affect the multiple properties of legitimacy. This pattern of analysis allows me to compare the effect of election salience measured in the population to the impact of the election salience manipulation, which provides both high external and internal validity.

Chapter 3 – The Magnitude of Legitimacy

Every election is composed of two elements, each of which has diametrically opposing effects on the magnitude of the public's support for political institutions. Elections give citizens the ability to express their voice and have input in the political system, and these voice effects increase the public's support for the political system (Finkel 1987; Rahn et al. 1999; Esaiasson 2011). Elections are also accompanied by campaigns that involve conflict, advertising, campaign contributions, candidates attacking each other and myriad other things that people do not like and these decrease public support (Gibson 2012). What the public desires is to have the ability to express their voice through elections without all the ensuing conflict that inevitably follows any somewhat salient election (Hibbing and Theiss-Morse 1995), but this is impossible. The ability for the public to express its voice through elections and disliked political conflict are inextricably linked.

When determining whether judicial elections increase the magnitude of legitimacy for state courts the important question becomes whether the positive voice effect overpowers the negative effect of campaign activity and conflict. This question has been approached from three different angles – the first uses experiments to examine the effect of campaign activity on legitimacy; the second looks at the cross-sectional differences between states with different selection methods; the third examines the change in legitimacy over an election cycle.

The results for the experiments generally agree that some but not all campaign activities lead to a decrease in perceived legitimacy. Gibson, Gottfried, Delli Carpini and Jamieson (2010) found that exposure to any campaign-related advertisement whether it was a traditional endorsement ad or an attack ad decreased legitimacy compared to an unrelated advertisement about improvements in education. Gibson (2008a, 2008b, 2009) found that a candidate making policy promises and pronouncements does not affect legitimacy, but when they accept campaign contributions it does decrease legitimacy. If judges recuse themselves from cases involving campaign donors that restores some legitimacy, but it does not return to the original levels (Gibson and Caldeira 2012). What these studies cannot answer is whether the negative effects of campaign activity are larger than positive effects of voice effects. The other two study types attempt to answer that question, but they come to contradictory results.

The cross-sectional studies have consistently found that partisan election states seem to be an outlier among the four types of selection. Both Benesh (2006) and Wenzel, Bowler and Lanoue (2003) used the same survey with different model specifications and found that confidence in state courts is lower in states with partisan election systems. Cann and Yates (2008) constructed a scale of support from items that asked whether judges in state courts were “trustworthy and honest”, “fair”, “provide equal justice” or made decisions “based on facts and law.” Their evidence showed that people in partisan election states were more negative on this scale. Jamieson and Hardy (2007) used a 2007 Annenburg survey to show that people in partisan election states were less trusting of state courts and less likely to say the courts were fair and impartial. They were also more likely to say courts legislate from the bench and were “politicians in robes”. This corpus of consistent evidence suggests that something about partisan elections in particular causes people to dislike state courts.

One problem for these cross-sectional studies is that they are seemingly contradicted by the results of the third type of study. Two panel studies – one from non-partisan Kentucky (Gibson 2012) and another from partisan Pennsylvania (Gibson et al. 2010) – show that over the course of an election cycle the legitimacy of state courts increases, even when taking into account the negative effects of campaign activity. Both of these studies measured legitimacy prior to a judicial election cycle and then again following the election, and they both find a significant increase in legitimacy that they attribute to judicial elections. Gibson (2012) explicitly models the tradeoff between the positive and negative effects of judicial elections by asking people to assess the campaign ads they saw during the campaign. Those people who evaluate these ads more negatively experience a smaller increase in legitimacy. However, even at the highest levels of this disagreeable ad perception scale, the overall change in legitimacy is zero rather than negative. Thus, his conclusion is that:

“Elections tend to elevate institutions’ support, but being exposed to objectionable ads subtracts from support, even if, for the vast majority of respondents, the negative effect of the objectionable ads is smaller than the positive effect of elections ”(Gibson 2012, pg 125).

The results from the cross-sectional and the panel-based studies contradict each other with one type showing that partisan elections increase support and the other showing they decrease support. However, one possible reason for these contradictory results is that both the cross-sectional and panel-studies have fundamental flaws that hinder their ability to isolate the effect of judicial elections on the magnitude of legitimacy for state courts.

The cross-sectional studies use sub-optimal measures of legitimacy, and the panel studies cannot isolate the specific effect of holding judicial elections from the effect of all the other elections held during the same election cycle. In this study, I will present evidence from a national survey with an embedded experiment that uses the measure of legitimacy recommended

by Gibson et al (2003a). The experimental results show that the voice effects associated with judicial elections increase legitimacy. However, the cross-sectional results show as the salience of elections increases in a state, the legitimacy of state supreme courts decrease. Since election salience should be associated with both positive voice effects and negative campaign effects, this suggests that the positive voice effects associated with judicial elections are smaller than the negative effects associated with campaign activity.

Pinpointing the Effect of Judicial Elections

The major flaw with the panel studies is that while they can say that elections increase the legitimacy of elected state supreme courts, they cannot determine whether this actually results from judicial elections because many other elections occur at the same time as the judicial elections. Gibson (2012) examined the 2006 general election in Kentucky. The four state supreme court elections during that cycle coincided with six elections for the U.S. House of Representatives and elections for many other state-level public officials. The legitimizing effect of an election is most likely not institution-specific. An election held to choose the members of some institution does not only increase the legitimacy of that specific institution. Instead, general elections have a broader effect and increase the legitimacy of all political institutions in some way. Most of the past research that has connected elections to support for a political system using panel data has not concentrated on one institution. Instead, they show that measures like political efficacy, trust in government or satisfaction with democracy increase over the course of an election cycle (Finkel 1987; Banducci and Karp 2003; Rahm, Brahn and Carlson 1999, Esaiasson 2011). If elections only affected those institutions in which the members were actually being elected, an appointed institution like the U.S. Supreme Court should not be affected, but previous work shows those same measures that elections increase are also associated with

increased legitimacy for the U.S. Supreme Court. Caldeira and Gibson (1992) show that political efficacy and support for the norms of democracy increase the Court's legitimacy, and Bartels and Johnston (2012) show that trust in the federal government increases the Court's legitimacy. The magnitude of the increase for appointed institutions may not be as large as for elected ones, but this evidence suggests that elections increase legitimacy even for appointed institutions like the U.S. Supreme Court.

This demonstrates the problem with pinpointing the effect of specifically judicial elections on increases in legitimacy using panel data. It is likely that the legitimacy of an appointed state supreme court would increase over an election cycle to the some degree. Judicial elections are extremely low salience affairs, and they will be drowned out by the other more salient elections like those for the U.S. House of Representatives. The amount of legitimizing power added by judicial elections will be small compared to the combination of all the other elections happening at the same time. Gibson (2012) includes suggestive evidence that it may not be judicial elections specifically but the totality of elections that caused the increase in legitimacy that study found. The Kentucky State Supreme Court uses a district system where one judge represents one region and only people within that region vote for the judge.¹³ For 2006 in two of the districts there was no Supreme Court election and in one district a judge ran unopposed. However, the level of legitimacy change did not significantly vary across district or based on whether an election was held in that district (Gibson 2012). Gibson attributes this to leak-over effects in which all voters – irrespective of district – saw judicial campaign advertisements because media markets do not match up with judicial districts. This could be the

¹³ In most state supreme courts, judges do not run in districts but instead for at-large seats that represent the complete state.

case, but it seems unlikely because self-reported exposure to campaign ads did significantly vary based on district (Gibson 2012).

A plausible alternative explanation for Gibson's (2012) panel study results is that judicial elections themselves have little legitimizing effect on state courts. Instead this increase in legitimacy is caused by other elections, and even if the Kentucky State Supreme Court were appointed it would still receive a similar legitimacy boost from elections. If this is the case, this causes a problem for Gibson's (2012) conclusion that judicial elections cause an overall increase in legitimacy even when controlling for the negative effects of campaign activity. Under this alternative explanation, both appointed and elected state courts receive a legitimacy boost from the voice effect associated with elections, but only elected courts receive the negative effect on legitimacy from campaign activity. This could lead to the situation where the overall effect of elections on legitimacy is larger for appointed courts than elected courts. Even if elected courts receive a somewhat larger boost of legitimacy from voice effects the negative effects of campaign activity could counteract the additional voice effects.

A Problem of Measurement

The main drawback of the cross-sectional studies – beyond the normal concerns with making claims about causation using this type of study – is the use of sub-optimal measures for legitimacy. Benesh (2006) and Wenzel et al. (2003) use confidence in the leaders of the institution as their measure. Cann et al. (2008) and Jamieson et al. (2007) use measures that tap into perceptions of judges' decision-making process. For example, Cann et al. (2008) include items that ask about judges' fairness, judges' honesty and whether judges make decisions based on the law. Jamieson et al. (2007) examine items asking about impartiality of judges and whether they are "politicians in robes." Perceptions of judges' decision-making process are an important

part of the Court's legitimacy, but these perceptions are an influence on legitimacy rather than the construct itself (Gibson and Caldeira 2011; Tyler 2006; Scheb and Lyons 2000; Ramirez 2008). The confidence measure is also problematic because it picks up a mixture of specific and diffuse support. Gibson, Caldeira and Spence (2003a) run an extensive analysis of this measure and other traditional measures of institutional support like favorability and show that none of them are good measures of diffuse support. Benesh (2006) acknowledges this problem with the measure, but justifies its use by saying that state courts are rarely included in surveys it was the only available measure at the time. My study improves upon the existing cross-sectional studies by using the items recommended by Gibson et al. (2003). This scale is composed of items that assess whether people want to make fundamental changes to the way an institution operates. It has been used in many previous studies on the legitimacy of state courts (Gibson 2008a, 2009, 2012; Gibson et al. 2010) and the U.S. Supreme Court (Caldeira and Gibson 1992; Gibson and Caldeira 2003b, 2009).

Selection Method, Election Salience and the Election Manipulation

This study will examine the relationship between judicial selection method and perceived legitimacy of state supreme courts in a variety of ways. First, I will use an experimental manipulation to test whether the voice effects component of judicial elections increases legitimacy. In the experimental condition of this manipulation, the subjects read a paragraph explaining the basic structure of their state's selection method. In control condition, the subjects are given no information. As previously said, elections have two components – positive voice effects and the negative aspects of campaigning. This manipulation provides a way to isolate the voice effects from the negative aspects of campaigning. Since 80 percent of the population approves of electing judges (Geyh 2003), it would be surprising if these voice effects do not

increase legitimacy. Three different versions of the experimental manipulation are included in the study. The first describes a competitive election scenario and was administered to those subjects in partisan and non-partisan states. The second describes a retention election system and the third an appointment system. The competitive election manipulation describes an election between multiple candidates and should increase legitimacy. The effect of the other two is less straightforward. A retention election describes a type of election so it could lead to an increase in legitimacy, but people may prefer a competitive election so the manipulation could decrease legitimacy. The appointment manipulation could also lead to a decrease in legitimacy because people prefer a competitive election system, but it could also have no effect because even if people prefer a competitive election system they consider an appointment system to be legitimate as well.

The ability to directly pinpoint the effect of voice effects on the legitimacy of state courts is useful, but it only provides a partial picture of the total effect of elections on legitimacy. Even if voice effects increase legitimacy, the total effect of judicial elections could be negative if the negative effect of campaign activity is larger than the positive voice effects. To examine the total effect of judicial selection method on legitimacy, I compare the legitimacy of state supreme courts in a variety of ways. First, I will examine the magnitude of legitimacy for state supreme courts across the four traditional categories of selection method. Following this, I will examine how both state and individual-level election salience affects the magnitude of legitimacy.

Measurement of Key Concepts

Legitimacy is measured using four items that assess whether the subjects support making fundamental changes to how an institution operates. These items are taken from the work of

Gibson and colleagues (Gibson et al. 2003a). The subjects were asked if they strongly agree, agree, neither agree nor disagree, disagree or strongly disagree with the following statements:

- 1) If the (insert institution name) started making a lot of decisions that most people disagree with it might be better to do away with the (insert institution name) altogether.
- 2) The right of the (insert institution name) to decide certain types of controversial issues should be reduced.
- 3) The (insert institution name) should have the right to say what the Constitution means, even when the majority of people disagree with those decisions.
- 4) People should be willing to do everything they can to make sure that any proposal to abolish the (insert institution name) is defeated.

Figure 3.1 shows the distribution of responses to these items split by whether the responses are supportive of the court (disagreement with 1 and 2, agreement with 3 and 4), neutral (neither agree nor disagree), or in opposition to the court (agreement with 1 and 2, disagreement with 3 and 4). The amount of support is more than twice as large as the amount of opposition for every item. Additionally for every item, except the controversial issues item, a majority of the sample expresses support for the state court. The legitimacy scale used in the analysis is an additive index of these four items. The Cronbach's alpha for this scale is .74, and every item strongly loads onto one factor with factor loadings greater than .58. This variable along with all variables, except state and individual election salience, are recoded with 0 as the minimum and 1 as the maximum.

Figure 3.1 – Distribution of Legitimacy Items

	Percent Supporting Court	Percent Neutral	Percent Opposing Court
Do Away with Court	60.7	22.4	17.0
Controversial Issue	45.9	35.2	18.9
Right to Say Constitution	54.1	22.9	23.0
Defeat Proposal to Abolish	53.8	32.4	13.8

Specific Support

In addition to measuring diffuse support like legitimacy perceptions, the survey includes measures intended to tap into specific support. Specific support is conceptualized as a person’s satisfaction with the output of an institution. Thus, the best way of directly measuring specific support is to directly ask about these outputs. To accomplish this, I use two items that ask about a person’s satisfaction with a court’s output in slightly different ways. The first is a general item that asks “How well do you think the (insert institution name) does its main job in government?” The subjects are given four answer options of great job, pretty good job, not very good job or poor job.

The second item asks specifically about satisfaction with policy outcomes through perceived ideological divergence. It reads “In general would you say the decisions of the (insert institution name) are too liberal, too conservative or about right?” The subjects are given the five answer options of much too liberal, somewhat too liberal, just about right, somewhat too conservative, and much too conservative. Both of these items were taken from previous surveys concerning the U.S. Supreme Court (Gibson, Caldeira and Spence 2003a). The ideological divergence item is recoded into a three level variable with just about right indicating the most satisfaction and either

much too liberal or much too conservative indicating the lowest level of satisfaction. The correlation between the two items is high ($r=.57$). To create a measure of specific support, these two variables are recoded with 0 as their minimum and 1 as their maximum and then added together. This additive index is again recoded with 0 as the minimum and 1 as the maximum.

Perceptions of Decision-Making Process

The legitimacy of an appointed court should be derived from perceptions of a court's decision-making process – specifically, whether the judges use a principled decision-making process. Other scholars have emphasized other types of decision-making perceptions like the myth of legality in which people perceive decisions as based solely on legal principles (Casey 1974; Jaros and Roper 1980; Scheb et al. 2000) or procedural fairness (Tyler 2006). Gibson et al. (2011) re-conceptualized judicial decision-making and argues for the importance of a two factor judicial decision-making typology. The first factor is whether judges exercise discretion or not, which is akin to acceptance or rejection of the myth of legality. The second identifies whether this discretion is exercised in a politicized or principled fashion. They emphasize that these principles do not necessarily need to be legalistic principles. The key is that judges do not make decisions in a self-interested way like ordinary politicians. Their evidence suggests that it is a perception of unprincipled or politicized decision-making that decreases legitimacy and not a lack of belief in the myth of legality.

The measure of decision-making perceptions used in this study taps into the spectrum ranging from politicized decision-making at one end to principled decision-making at the other. Two items ask specifically about the politicization of the courts and one asks about whether judges use a principled decision-making process. The subjects are asked to respond to the same five-point agreement/disagreement response options for the following items:

- 1) The judges of the (insert institution name) usually follow a firm and proper set of guiding principles when making decisions.
- 2) The judges of the (insert institution name) are little more than self-interested politicians.
- 3) The (insert institution name) gets too mixed up in politics.

The alpha for an additive index of these three items is .80, and each item loads onto a single factor with loadings larger than .64. Throughout the analysis this index is called politicization perceptions. Figure 3.2 shows the distribution of responses to the decision-making items. A principled perception is one where they agreed with item 3 and disagreed with 1 and 2. A politicized perception is the opposite response and a neutral response is the “neither agree nor disagree” response. One difference between the distribution of the decision-making and legitimacy items is a marked increase in the number of neutral responses for the decision-making items. This most likely results from it being easier to form opinions about whether a court is legitimate or not than about how they make decisions. The distribution of the decision-making items is also more negative than for the legitimacy items. For the two items directly asking about politicization the percentage perceiving the Court as principled is about the same or lower than the percentage perceiving it as politicized. This is in stark contrast with the legitimacy items where positive responses are at least twice as prevalent as negative responses.

Figure 3.2 – Distribution of Decision-Making items

	Percent Principled Perception	Percent Neutral	Percent Politicized Court
Nothing more than politicians	29.3	42.1	28.5
Too mixed up in politics	17.7	44.8	37.5
Principled Decision-Making	49.2	40.0	10.8

Data Analysis

The first task is to demonstrate the effect of the experimental manipulation on legitimacy and other forms of institutional support. This will test whether the positive voice effects associated with other types of elections also apply to judicial elections. The text of the manipulation describes the basic outline of a state’s judicial selection method, and this varies by which of the four traditional categories of selection method a state uses. A separate model is run for each manipulation. The model includes a variety of control variables and a random intercept that varies by state.¹⁴ The text for the partisan and non-partisan states is exactly the same so those states will be analyzed in one model.

I run three different models for each group of states with the dependent variable either being legitimacy, specific support or politicization perceptions. Table 3.1 contains the results from all of these models. To simplify the results, the only coefficient displayed is for the experimental manipulation (Appendix B shows the full models). The only significant coefficient at $p < .05$ (one-tailed) is the effect of the competitive election manipulation on legitimacy perceptions. This manipulation increases legitimacy by .031. Since all variables are coded from 0

¹⁴ The control variables are election fairness, rule of law, governor knowledge, court awareness, education, state election salience and individual election salience. See Appendix A for a description of these variables. The other two dependent variables are also included in the models – i.e. the legitimacy model contains both specific support and politicization perceptions. This is to pinpoint the direct effect of elections on the dependent variables.

to 1, this means that legitimacy perceptions were 3.1 percent higher on the legitimacy index in the experimental condition than in the control condition. This effect is statistically significant but substantively small. It represents a movement of less than one point on the 20 point legitimacy index or less than a person moving from strongly agree to agree on one of the four legitimacy items. The manipulation had no significant effect on either specific support or politicization perceptions.

Table 3.1 – The Manipulation and Attitudes Toward State Courts

Dependent Variable	Competitive Election Manipulation	Retention Manipulation	Appointment Manipulation
Legitimacy Perceptions	.031 (.016)*	.023 (.020)	.011 (.020)
Specific Support	-.015 (.018)	-.027 (.032)	.020 (.020)
Politicization Perceptions	-.012 (.017)	.015 (.014)	.007 (.019)

*p<.05 (one-tailed)

Each entry is the OLS coefficient on the experimental manipulation. The standard errors are in parentheses. The complete model includes control variables and is a multi-level model with a random intercept that varies by state. The sample sizes for the competitive election models are between 745 and 755; between 381 and 383 for the retention election models; and between 364 and 371 for the appointment states models.

These results suggest that the positive voice effects associated with competitive elections increase legitimacy but have little impact on other types of institutional support like politicization perceptions and specific support. These voice effect component of elections has a targeted legitimizing effect that does not leak over into other types of support.

The only manipulation that had significant effect was the competitive election manipulation. This pattern repeats throughout the analysis and makes sense because the competitive election manipulation is the purest manipulation of election salience and test of my theory. A retention election system contains both appointment and election components, and the manipulation's effect depends on whether the subject interprets the system as an election or appointment system. Since the retention election manipulation could increase election salience for some and decrease it for others – depending on their interpretation – it will most likely have little overall effect. The appointment manipulation references that “other public officials of the state government” appoint the judges to the court. These other public officials will be either the governor or the legislature. Emphasizing the link between state courts and the elected branches of the government could provide an association between the state courts and elections.

The Four Categories of Selection Method

The experimental manipulations examined how voice effects associated with elections changed attitudes toward institutions, but it cannot speak to the total effect of elections and selection method on these attitudes. To examine the total effects, I will first look at the average level of legitimacy, specific support and politicization perceptions within each of the four traditional categories of judicial selection method. These models only include subjects from the control condition because it is meant to examine the natural variation between states with different selection methods. If the subjects from the experimental manipulation were included they would contaminate the results because it would be impossible to identify whether the differences between the different selection methods results from naturally occurring variation or from the experimental manipulation. These averages are shown in Figure 3.3. Across legitimacy,

specific support and politicization perceptions, the partisan election states are outliers with courts in those states being seen as less legitimate, more politicized and having less specific support.

Figure 3.3 – Attitudes Toward Institutions by Selection Method

	Partisan	Non-Partisan	Retention	Appointment
Legitimacy	.58 (.02)	.62 (.03)	.61 (.02)	.61 (.02)
Specific Support	.59 (.03)	.64 (.03)	.66 (.03)	.61 (.02)
Politicization Perceptions	.53 (.02)	.50 (.02)	.47 (.02)	.49 (.02)

Each cell contains the mean for the specified measure within that category of states. Standard errors appear in parentheses. These means were calculated for the control group only. The number of subjects within each cell is approximately 200.

Since partisan election states are the outliers among the four categories I run a set of models with an indicator variable for partisan election states as the only independent variable to test whether state courts in partisan election states are significantly different from the other types of states. The dependent variables in these models are legitimacy, specific support or politicization perceptions. The results shown in Table 3.2 reveal that partisan election states have significantly ($p < .05$) less specific support and are perceived as using a more politicized decision-making process, but are not perceived as being significantly less legitimate. The coefficient for the partisan election indicator is negative in the legitimacy model, but the difference from zero is less than one standard error. Since confidence is an indicator of specific support, these simple models are a replication of the past studies that found people have less confidence in courts from

states with partisan elections (Benesh 2006; Wenzel et al. 2003). They also replicate the finding that partisan election courts are perceived as being more biased and politicized (Cann et al. 2008; Jamieson et al. 2007). However, the results in Table 3.2 also demonstrate the limitations of these studies because courts with partisan elections do not seem to be perceived as less legitimate.

Table 3.2 – Partisan Elections and Institutional Support

VARIABLES	Legitimacy	Specific Support	Politicization Perceptions
Partisan Election State	-.023 (.025)	-.054* (.026)	.045* (.022)
Constant	.623* (.014)	.651* (.014)	.474* (.012)
Observations	796	783	792
Number of groups	49	49	49

Robust standard errors in parentheses

* p<0.5

The models include a random intercept that varies by state and only include subjects from the control condition.

The models in Table 3.2 are very simple. To ensure that the lack of an effect of selection method on legitimacy is not a result of this simplicity, Table 3.3 includes a model of legitimacy that includes the same control variables as the model in Table 3.1. Two different models are included. The first model includes an indicator variable for just partisan elections. This variable tests for a difference between partisan election states and all the other states. The coefficient is insignificant and substantively small. The model in column 2 takes a different approach and includes indicator variables for the other three types of selection methods. These variables test for a difference between each individual selection method and partisan elections. Again, there

appears to be no difference between the perceived legitimacy of state courts based on the four traditional categories of selection method. All of the selection method indicator variables are insignificant. In summary, these results indicate that there does not seem to be any differences in the average legitimacy attributed to state supreme courts based on the four traditional categories of judicial selection method. Partisan elections affect specific support and politicization perceptions but not measures of diffuse support like legitimacy.

Table 3.3 – Judicial Selection Method and the Magnitude of Legitimacy

VARIABLES	(1) Legitimacy	(2) Legitimacy
Partisan	-.01 (.02)	
Non-Partisan		.01 (.02)
Retention		-.02 (.02)
Appointment		.02 (.02)
Politicization Perceptions	-.38* (.05)	-.38* (.05)
Specific Support	.19* (.06)	.19* (.06)
Election Fairness	-.04 (.03)	-.04 (.03)
Rule of law	.11* (.04)	.11* (.04)
Awareness	.17* (.05)	.17* (.06)
Education	.14* (.03)	.14* (.03)
Governor Knowledge	.01 (.03)	.01 (.03)
Constant	.47* (.10)	.44* (.09)
Observations	764	763
Number of groups	49	49

Robust standard errors in parentheses

* p<0.05

This model is estimated using OLS and includes a random intercept that varies by state. All variables are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these models.

Election Salience and the Magnitude of Legitimacy

Just because judicial selection method as measured by the four traditional categories does not affect the legitimacy of state supreme courts does not necessarily mean that judicial selection method in general has no effect on legitimacy. As I argued in chapter 2, these categories are imperfect because there is a vast amount of variation within each category. A better method of categorizing different selection methods is the concept of election salience. Election salience takes into account the large variation within each category in legal institutional arrangements, idiosyncratic norms and the history of elections. Additionally, many people do not know how judges in their states are selected, and in the absence of explicit knowledge they will assume that judges are appointed (see chapter 2 for data suggesting this). For all of these reasons, it is possible that judicial selection method affects legitimacy, but the four traditional categories are not picking up on that effect.

Table 3.4 shows a model that includes both state and individual level election salience in a model of legitimacy along with control variables. The coefficient for state-level election salience is significant ($p < .05$) and negative while the coefficient for individual-level election salience is insignificant and insubstantial. Moving state-level election salience from its minimum of -1.01 (Massachusetts) to its a maximum of .72 (Wisconsin) decreases legitimacy by 7 percent of its total range. State-level election salience is not the largest determinant of the magnitude of legitimacy for state supreme courts. Other things like politicization perceptions, specific support, education and rule of law have larger effects, but a limited effect of election salience on legitimacy is not unexpected by my theory. Rather than changing the magnitude of legitimacy, the predominant effect of elections on legitimacy is to change the character of legitimacy from a legitimacy derived from principled decision-making to a legitimacy derived from elections.

There is no inherent reason why the magnitudes of these two types of legitimacy should differ. This model though suggests that in practice the legitimacy of courts in states with highly salient election systems are lower than in states with highly salient appointment systems. The reason is that the voice effects caused by an increase in election salience are smaller than the negative campaign effects associated with this increase in election salience.

Table 3.4 – Election Salience and the Magnitude of Legitimacy

VARIABLES	Legitimacy
State Election Salience	-.04* (.02)
Individual Election Salience	.00 (.01)
Politicization Perceptions	-.36* (.06)
Election Fairness	-.04 (.03)
Rule of Law	.13* (.04)
Governor Knowledge	.01 (.03)
Awareness	.18* (.05)
Specific Support	.20* (.06)
Education	.13* (.03)
Constant	.43* (.10)
Observations	747
Number of groups	49

Robust standard errors in parentheses

* p<0.05, ^x p<0.1

This model is estimated using OLS and includes a random intercept that varies by state. All variables except state and individual level election salience are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in this model.

Conclusion

The direct effect of elections on the magnitude of legitimacy has two components – positive voice effects and negative campaign activity. In this analysis, I used an experimental manipulation to isolate the positive voice effects of specifically judicial elections. The experimental results presented here confirm that the voice effects associated with specifically judicial elections increase legitimacy just like the voice effects associated with other types of elections.

These experimental results cannot speak to the overall effect of elections on legitimacy because they do not take into account the negative effects of campaign activity. I model the total effect of elections on legitimacy through the concept of election salience. The results show that individual-level election salience has little effect on legitimacy, but increases in state-level election salience decreases the magnitude of legitimacy attributed to state supreme courts. Understanding what this means requires understanding the differences between the individual-level and state-level election salience measures. While both the individual and state level variables are measures of election/appointment knowledge accessibility, the state-level variable is an attribute of the state while the individual-level variable is an attribute of each person. State election salience should be thought of as an alternative method of categorizing the different selection methods used by states just like using the four traditional categories are one method of categorizing the states. The difference between the four traditional categories and the state-level election salience measure is that the election salience measure takes more information into account and provides a more fine-grained distinction. For example in some states judges regularly retire before the end of their term so someone can be appointed to replace them and the appointed judge then faces a competitive election the next term. This type of system is a

combination of appointment and election elements. Using the four traditional categories this type of system would be categorized as either a partisan or a non-partisan election state, and this would ignore the appointment elements that are part of the system. The state-level election salience measure takes into account that the state has both appointment and election elements. Rather than defining this type of state as either purely appointment or purely election-based, it would place that state in the middle of the election salience scale.

When thought about in these terms, state election salience becomes an objective measure of the state's combination of legal institutional arrangements, political norms, historical prevalence of salient elections and other idiosyncrasies of the state. The individual measure of election salience on the other hand is an individual's perception of that state's election system. The state with a norm of pre-election retirement is again a good example of how these can differ. Even if everyone in the state has complete knowledge about a state's system along with the pre-election retirement norm, some people will categorize it as an election system and some will categorize it as an appointment system. Because some people categorize it as an election and some people categorize it as appointment, the state-level election salience measure for this type of state should be in the middle of the election salience range. The individual-level measure picks up on whether people perceived this objective combination of appointment and election elements as either being an appointment or election system. Including both state and individual election salience in a model tests whether it is the perception that a system is election or appointment based (individual level measure) or whether it is a state that has a combination of appointment and election elements (state level measure) that affects the legitimacy of state supreme courts. The results shown in Table 3.4 suggest that it is the actual system with a

combination of appointment and election elements that affects legitimacy rather than an individual's perception of this as an election or appointment based system.

A good way of thinking about the state-level election salience measure is as a count of the number of election elements in a state. Election elements would include things like a history of contentious and high profile elections, no pre-election retirement norm or competitive rather than retention elections. Since the effect of state-level salience is negative it appears that as states add more election elements to their system this will decrease the magnitude of legitimacy attributed to their state supreme courts. Thus, the added positive voice effects from additional election elements is smaller than the additional negative campaign effects associated with these additional election elements.

Chapter 4 – The Effectiveness of Legitimacy

The role of an institution of de-politicization is to act as a force that defuses conflict and removes political issues from political debate and discussion. Most of the work examining how institutions accomplish this concentrates on the U.S. Supreme Court and proposes that the Court defuses conflict by converting its high levels of legitimacy and support into acceptance of its decisions. Acceptance is defined as when someone considers a decision the final word on a matter and no longer desires to challenge it further. In this chapter, I will show that institutions are able to convert legitimacy into acceptance only when they are associated with appointment selection systems and their legitimacy is derived from principled decision-making. When institutions are associated with elections, their legitimacy does not affect acceptance. In terms of the multiple properties of legitimacy, this means that as institutions become more associated with elections the effectiveness of their legitimacy decreases. However, eliminating the direct link between legitimacy and acceptance does not eliminate the ability of an institution to induce acceptance of its decisions. Institutions can still cause acceptance indirectly by persuading people to agree with the policy implications of their decisions by changing their substantive policy attitudes. The following analyses will show that while institutions associated with elections are unable to convert legitimacy directly into acceptance they can change a person's substantive issue position.

The analysis will show that appointed institutions induce acceptance directly because their legitimacy acts as a legitimizing cue, and elected institutions induce acceptance indirectly because their specific support acts as a persuasive cue that changes substantive issue attitudes. This would appear to show that both types of institutions can act as an effective institution of de-politicization, but that is not true. Specific support is a highly unstable type of attitude (Easton 1965; Gibson et al. 2003a), and an institution would be unable to rely upon specific support to induce acceptance during times when it is acting in a counter-majoritarian fashion for an extended period of time. After a few disagreeable decisions, specific support will rapidly deteriorate while legitimacy should stay relatively stable (Gibson et al. 2003a, 2003b, 2009) Because of this, it is only an appointed institution and its highly effective legitimacy that will be able to fulfill the role of a functioning institution of de-politicization over the long-term.

Institutional Support and Reactions to Specific Decisions

The literature on how an institution affects the public's reaction to specific decisions concentrates on the U.S. Supreme Court and can be split into two different categories: those that examine acceptance of a decision and those that examine agreement with the policy implications of a decision. The evidence concerning the ability of the U.S. Supreme Court to induce agreement with the policy implications of a decision is mixed with experimental evidence showing one thing and the survey evidence another. Experimental evidence shows that a U.S. Supreme Court decision causes to change their substantive policy attitudes toward more agreement with the Court (Bartels and Mutz 2009; Mondak 1994; Clawson, Kegler and Waltenburg 2001; Hoekstra 1995; see Baird and Javeline 2007 for an example using Russian courts). However, when examining aggregate public opinion before and after U.S. Supreme Court decisions, Marshall (1989) found little movement toward the decision. Instead, the non-

experimental evidence suggests that a decision restructures public opinion by moving some people in one direction and others in the opposite (Franklin and Kosaki 1989, Johnson and Martin 1998; but see Hoekstra and Segal 1996 for evidence of an aggregate change in a locality especially affected by a decision). The evidence concerning the ability of the Court to convert its legitimacy into acceptance of its decision is more one-sided. Multiple studies show that the legitimacy of the U.S. Supreme Court (Gibson et al. 2005, Gibson 1989; Mondak 1990,1994; Clawson et al. 2001, 2003) along with other judicial institutions (Gibson and Caldeira 1995, 2003b) causes people to accept decisions with which they disagree (see Skitka, Bauman and Lytle 2009 for a rare exception involving issues involving morality).

These two streams of research usually do not usually overlap because some authors concentrate on substantive policy attitudes while others concentrate on acceptance judgments, but this is not universally true. Zink, Spriggs II and Scott (2009) examined how attributes of a court decision like a divided versus unified affect both acceptance and substantive issue attitudes. Both Clawson et al. (2001) and Mondak (1994) show that attributing a policy decision to the U.S. Supreme Court affects substantives policy attitude change and acceptance.¹⁵ While these studies examine acceptance and substantive policy attitudes at the same time, none of them look at how the impact of different forms of institutional support varies based on whether the dependent variable is substantive policy attitude change or acceptance. The study presented here will show that these two streams of research are conceptually distinct because the processes that lead to substantive policy attitude change are different than the processes that lead to policy

¹⁵ Neither study used the word acceptance to describe the concept they examined. Clawson et al. (2001) called their concept that is equivalent to acceptance the propensity to protest, and Mondak (1994) called his concept policy legitimacy. However both are conceptually similar to acceptance as defined in this study.

acceptance. Because a different psychological process causes each, different forms of institutional support affect substantive policy attitude change and policy acceptance.

The concept of legitimacy refers to whether an institution has the moral and legal authority to make a decision. When people are considering whether to accept or challenge a decision, they are more likely to accept a decision from a legitimate institution because that institution has the right to make a decision (at least for appointed institutions). However, the process that leads people to change their underlying policy attitudes is much different and does not involve the moral or legal authority of the deciding institution. According to dual process theories of persuasion, persuasion results from heuristic cues and/or the systematic processing of arguments (Chaiken, Liberman and Eagly 1989; Petty and Wegener 1999). An institutional decision is usually thought to persuade by acting as a heuristic cue (Bartels and Mutz 2009) in the same way that a political endorsement acts as a heuristic cue (Lau and Redlawsk 2001; Lupia 1994). These cues only work if people have favorable feelings toward the source (Chaiken and Eagly 1983) or perceive it as a credible or expert guide on policy (Petty, Cacioppo and Goldman 1981).

Conceptually, the legal and moral authority of an institution to make a decision should be separate from whether an institution is perceived as being a credible guide for policy attitudes. The former is the definition of legitimacy while the latter should be governed by whether an institution made pleasing decisions in the past. If the institutions made pleasing decisions in the past, a person will expect it to make pleasing decisions in the future, and the institution can be trusted to act as a credible guide on future policy issues. Specific support is a measure of whether someone likes the past policies and outputs of an institution (Easton 1965), and thus specific support should affect substantive policy attitude change.

Elections, Legitimacy and Specific Support

The ultimate goal of an institution of de-politicization is to induce the mass public to accept its decisions. Mondak (1994) showed that this occurs through two routes. The first is an indirect route where an institution persuades a person to agree with the policy implications of a decision. If the person agrees with the policy implications they will also accept the decision because it does not make sense for someone to challenge an agreeable decision. As discussed above, whether an institution can persuade a person in this way should be dependent on upon specific support. The second is the direct route in which the institution's legitimacy causes a person to accept the court's decision.

The availability of these two routes to acceptance depends on whether the institution is elected or appointed. Legitimacy derived from elections is low on effectiveness and as a result, this type of legitimacy does not induce additional acceptance. Political conflict and issue disagreement is inherent in the idea of elections. Even if an elected institution has the moral and legal authority to make a decision it does not necessarily follow that someone should accept that decision. At the next election people are encouraged to vote out whoever made the disagreeable decision and replace them with someone who will repeal the previous decision and replace it with a better one. This leaves the indirect route through changing a person's substantive policy attitude as the only method available to an elected institution for inducing acceptance.

Both routes to acceptance should be available for appointed institutions, but the effect of the direct route from legitimacy to acceptance should be larger than the effect of the indirect route from specific support to policy attitudes to acceptance. Much research has shown that people are reluctant to change their policy attitudes and they actively fend off persuasion attempts through motivated reasoning processes. Lodge and Taber (2013) argue that when

presented with counter-attitudinal information people will actively counterargue against this new information and as a result will not be persuaded by it. These same processes that lead people to be resistant to policy attitude change should be less applicable to acceptance judgments. The direct route from legitimacy to acceptance offers a way to bypass the ubiquitous motivating reasoning involved in most policy reasoning. If people are thinking about the legitimacy of an institution when presented with a decision it does not matter if they agree or disagree with the policy implications of that decision. No matter how many counter-arguments they come up with for why the court made the incorrect policy decision, if they believe the court is legitimate they should still accept the decision (again this only applies to appointed courts).¹⁶

In summary, for institutions associated with appointment systems legitimacy should be the predominant determinant of acceptance judgments, and for institutions associated with elections specific support should be the predominant determinant of acceptance judgments.

Study Design

The data for this study comes from the national survey described in chapter 2. That survey includes a section that presents subjects with a fictitious decision from an institution concerning the juvenile life sentence. Prior to the announcement of the institutional decision, the subjects are asked their position on the juvenile life sentence and the decision presented by the institution is always contrary to subjects' stated position. Following the announcement of the decision, the subject's acceptance of the decision is assessed, and they are asked the issue position item again. This post-decision issue position item is combined with the pre-decision issue position item to create a measure of substantive policy attitude change. This survey

¹⁶ In some cases the process of counter-arguing may lead people to create arguments that attack the legitimacy of the deciding institution. This however is an extreme instance of counter-arguing and will most likely occur less often than traditional instances of counter-arguing in which people only defend their policy positions without attacking the deciding institution itself.

contains a manipulation that varies the deciding institution. For 8/9 of the subjects, the deciding institution is a state supreme court, and for the remaining 1/9 the deciding institution is a state legislature. This manipulation allows me to compare appointed and elected courts to state legislatures. According to my theory any institution associated with elections – whether it is a court or a legislature – should have similar determinants of acceptance.

Using this survey, I will first examine whether substantive policy attitude change and acceptance have different determinants. Next, I will compare the determinants of acceptance for state supreme courts using the four traditional categories of judicial selection method and using election salience. During this analysis, I will compare the determinants of acceptance for a legislature to the different types of courts. Following this cross-sectional analysis, I will examine how experimental manipulations that are designed to change election salience affect the determinants of acceptance.

Measurement

All the questions and items used in this study were designed to be applicable to both a legislative and judicial institutions with minimal changes. Except for the issue position item, the decision and one legitimacy item the only difference between the legislature and judiciary items is the name of the institution and how the members of each institution are referred to in the items. For legislature they are called members, and for the judiciary they are called judges.

The issue presented to the subjects concerned whether a juvenile who is convicted of murder and is at least 16-years-old should be eligible for a life sentence without the chance of parole. The subjects are told that the deciding institution has made a decision (court) or passed a law (legislature) on this issue but are not told its content. They are then asked to indicate whether they think 16-year-old juveniles convicted of murder should be eligible for a life sentence

without the chance of parole. Following this they are asked how strongly they hold their opinion on a four-point scale and how personally important the issue is to them on a four-point scale.

Following this the election/appointment salience experimental manipulation is administered and the subjects answer the legitimacy, politicization and specific support items, which are outlined in chapter 3. One legitimacy item requires more changes than the others to apply to a legislature. This item reads “The (institution name) should have the right to say what the Constitution means, even when the majority of people disagree with those decisions.” This obviously cannot apply to a state legislature, but the concept behind the item can apply to a legislature. Conceptually, this item asks whether an institution should be able to fulfill its main function even when the majority disagrees with the institution. The main function of a state legislature is to pass new laws. The legislature legitimacy item reads: “The (institution name) should have the right to pass new laws, even when the majority of people disagree with those laws.” The legitimacy scales in the legislature and judicial conditions exhibit similar measurement properties. The alphas are .76 and .74 respectively. All four items form a single factor with loadings that range from .61 to .70 for the legislature and .59 to .66 for the judiciary.

Institutional Decision

The announced decision was always contrary to the subject’s stated position. The announcement read “The (institution name) issued a decision saying the government (CAN / CANNOT) impose a sentence of life in prison without the chance of parole on 16-year-old juveniles convicted of murder. The judges said this type of penalty (does not constitute / constitutes) cruel and unusual punishment and thus (does not violate/violates) the Constitution.” The wording in the parentheses changed depending on whether the subject supported or opposed the juvenile life sentence. For the legislature condition the decision instead read: “The

(institution name) passed a bill saying the government (CAN / CANNOT) impose a sentence of life in prison without the chance of parole on 16-year-old juveniles convicted of murder. The legislators said this type of penalty (does not constitute / constitutes) cruel and unusual punishment and thus (should / should not be) allowed.”

Acceptance

Acceptance is defined as when a person considers some decision the final word on a matter. It does not require them to agree with the decision, only that they no longer desire to challenge the decision. When thinking in terms of Easton’s analysis of political systems (Easton 1965), a decision that is accepted by the mass public does not form a feedback loop and no longer places a demand on the system. The acceptance items must tap into the idea that some political conflict has been defused and people no longer desire to challenge a decision. I use three acceptance items that each assess whether people want to challenge the decision in a slightly different manner.

The first item is a general acceptance item that asks: “Do you accept this decision and consider it the final word on the matter or do you think there ought to be an effort to challenge it and get it changed?” This dichotomous item is combined with a four-level strength follow-up item. The second and third items ask about two common ways that people could challenge a decision. The second asks whether people would support or oppose efforts to remove judges/legislators who voted against the subject’s position on a seven-point scale. The third asks whether people would sign a petition in support of a group that was attempting to overturn the decision on a four-point scale. Each of these variables is recoded from 0 to 1 and then added together to form an index of acceptance. This variable is then recoded again from 0 to 1. The

Cronbach's alpha for this scale is .79, and each item loads onto a single factor with a loading greater than .64.

Data Analysis

For the data analysis, I will first show that specific support acts as a persuasive cue that changes substantive policy attitudes and legitimacy does not. Following this, I will examine how the marginal effect of specific support and legitimacy varies across the four traditional categories of judicial selection method, election salience and the experimental conditions.

Substantive Issue Position Change

The subject's issue position on the juvenile life sentence was measured before the court's decision was announced and then again directly after the subject answered the acceptance items. The measure of attitude change is created by subtracting the subject's post decision opinion (coded so higher numbers indicate more disagreement with the court stated opinion) from the subject's prior attitude strength. As this measure of attitude change becomes more positive that indicates greater movement toward the court's announced opinion. Negative numbers on this measure indicate a backlash effect where people moved away from the court's decision. This measure ranges from a high of 7. This indicates a person who had a very strong prior opinion and when presented with the opposing decisions, their attitude switched to a very strong opinion in the opposite direction. The lowest point on the scale is -3. This indicates a person who had a not strong opinion prior the decision. After being presented with court's decision moved in the opposite direction, this person moved in the opposite direction and now has a strong opinion in opposition to the court's decisions. In the study, people exhibited little attitude change. 57 percent of the sample did not change their attitude. Of the remaining 43 percent, 31 percent only moved one point on the scale. Overall, movement toward the court's decision was more

prevalent (31 percent of the sample) than movement away from the court's decision (12 percent of the sample).

Table 4.1 displays two models with substantive attitude change as the dependent variable and another with acceptance as the dependent variable. The first model looks at substantive policy attitude change in the judicial condition, contains all the control variables used previously and includes a random intercept that varies by state. In the attitude change model from column 1, the only significant coefficient ($p < .05$) besides attributes of the case itself like opinion strength, issue important and the direction of the decision is specific support. Neither legitimacy nor any other variable that is an attribute of the institution has a significant effect on substantive policy attitude change. The results for the legislature condition shown in column 2 of Table 1 replicate those from the judicial condition. The effect of specific support on policy attitude change is significant at $p < .05$ and positive while the effect of legitimacy is insignificant.

This evidence suggests that specific support acts as a persuasive cue changing a person's substantive issue attitude while legitimacy perceptions do not affect a person's substantive policy attitude. The average effect of specific support though is not large within the judicial condition. The attitude change variable is coded so that a 1 indicates a person moved one strength level – i.e. from very strong to strong opinion. Thus, the .37 coefficient shows that taking specific support from its minimum to maximum causes on average a movement of less than one strength level. This most likely results from the fact that the subject's opinion was assessed two times within a 10 minute survey, and they were resistant to expressing a vastly different opinion in the post-decision attitude measure. I expect this design understates the persuasive effect of specific support.

As a comparison to the attitude changes results, Table 4.1 also displays a model of

acceptance for the judicial condition, and in this model both legitimacy and specific support have a strong effect on acceptance.¹⁷ Acceptance is coded with 0 as the minimum and 1 as the maximum, and the coefficients can be interpreted as the percentage of its range acceptance moves when taking the independent variable from its minimum to maximum. Legitimacy moves acceptance 22 percent of its range while specific support moves acceptance 16 percent of its range. These effects are much stronger than the effects found for substantive issue attitude change. This makes sense because people should be more likely to accept a case than they are to change their underlying policy attitude.

¹⁷ The results for the acceptance model within the legislature condition will be discussed later. They are excluded here because legitimacy is not expected to affect acceptance for elected institutions like a legislature.

Table 4.1 – Attitude Change and Acceptance

VARIABLES	Court	Legislature	Court
	Attitude Change	Attitude Change	Acceptance
Legitimacy	.07 (.16)	.30 (.48)	.22* (.03)
Specific Support	.37* (.18)	1.31* (.54)	.16* (.03)
Prior Opinion Strength	.41* (.15)	.46 (.46)	-.31* (.03)
Issue Importance	-.26* (.13)	-.32 (.51)	-.17* (.02)
Anti-Life Sentence Decision	-.33* (.08)	-.27 (.24)	-.11* (.01)
Control Variables	(Included)	(Included)	(Included)
Constant	.18 (.33)	-1.06 (.95)	0.55* (0.06)
Observations	1,450	195	1,454
Number of groups	50	42	50

Robust standard errors in parentheses

* p<0.05

This model is estimated using OLS and includes a random intercept coefficient that varies by state. All variables except attitude change, state election salience and individual election salience are coded with 0 as the minimum and 1 as the maximum. The sample for this table contains both the experimental and the control condition. Additional control variables are included in the model but not displayed in the table. See Appendix A of chapter 4 for the results of the complete model. None of the excluded control variables are statistically significant at p<.05.

The overall conclusion from Table 4.1 is that only specific support affects substantive issue attitude change while both specific support and legitimacy affect acceptance judgments for judicial institutions. All the effects in Table 4.1 are averaged across all 50 states and across both the control and experimental conditions. In the following sections, I will determine the conditions under which specific support is the predominate determinant of acceptance and under

what conditions it is legitimacy. Based on the results from column 1 of Table 4.1 if specific support is the predominant determinant the institution's decision is acting more like a persuasive cue and if legitimacy is the predominant influence then the courts decision is acting more as a legitimating cue.

Four Traditional Categories of Selection Method

Table 4.2 displays the models that test the average effect of the four traditional categories of selection method on acceptance and how these different categories change the determinants of acceptance for judicial institutions. For both models, an indicator variable is included for the different categories with partisan election states as the excluded category. This model only includes subjects from the control condition. If the experimental condition were included, it would be impossible to differentiate the effect of the selection system in a state from the different experimental manipulations administered in each category of states. Column 1 includes the three category variables without any interactions to examine any differences between the average level of acceptance within each category. The coefficient for the retention election states is marginally significant ($p < .1$) and positive. This indicates there may be some difference between partisan election states and retention election states. However, neither partisan election states nor retention election states are statistically different from non-partisan states and appointment states. Overall, judicial selection method as measured by the four traditional categories do not appear to have a substantial average effect on acceptance.

Column 2 of Table 4.2 interacts each indicator variable with both specific support and legitimacy. This model tests whether selection method changes the determinants of acceptance. Legitimacy should have the largest marginal effect in appointment systems and the lowest in competitive election systems, while specific support should exhibit the opposite pattern. The

interaction coefficients are generally in the right direction with legitimacy have the smallest effect and output having the largest effect in the competitive election states. The only interaction that approaches statistical significance is the difference between the marginal effect of legitimacy within non-partisan states ($b=.17$) and within appointment states ($b=.33$). This is in the correct direction but again is only marginally significant ($p<.1$).

Overall, the results from Table 4.2 trend in the correct direction with legitimacy having a smaller effect and specific support a larger one in those states with competitive elections, but these differences do not reach statistical significance. This is not unexpected though because of the problems with using the four traditional categories of selection method outlined in chapter 2. Rather than the four traditional categories, election salience should determine whether it is legitimacy or specific support that is the predominate influence of acceptance for judicial institutions.

Table 4.2 – Acceptance and Four Traditional Categories

VARIABLES	(1) Acceptance	(2) Acceptance
Non-Partisan State	.04 (.03)	.04 (.09)
Retention Election State	.05 ^x (.03)	.10 (.10)
Appointment State	.02 (.02)	-.00 (.09)
Legitimacy	.23* (.05)	.21* (.07)
Specific Support	.12* (.05)	.15 (.11)
Non-Partisan X Legitimacy		-.04 (.09)
Retention X Legitimacy		.03 (.10)
Appointment X Legitimacy		.12 (.08)
Non-Partisan X Specific Support		.03 (.12)
Retention X Specific Support		-.10 (.12)
Appointment X Specific Support		-.08 (.10)
Control Variables	(Included)	(Included)
Constant	0.46* (0.12)	0.44* (0.13)
Observations	758	758
Number of groups	49	49

Robust standard errors in parentheses

* p<0.05, ^x p<0.1

This model is estimated using OLS and includes a random intercept that varies by state. All variables except are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses. Additional control variables are included in the model but not displayed in the table. See Appendix A of chapter 4 for the results of the complete model

Election Saliency

Table 4.3 displays a set of models that examine the average effect of state and individual-level election saliency on acceptance and how these two types of election saliency affect the determinants of acceptance. These models have acceptance as the dependent variable, include the same set of controls as previous models, include a random intercept that varies by state and only include the subjects from the control condition. Column 1 tests the average effect of the two types of election saliency. The coefficient for both individual and state level election saliency is .00. This shows that both types of election saliency do not directly affect acceptance. If election saliency has impact on acceptance it is by changing the determinants of acceptance.

Column 2 of Table 4.3 tests whether election saliency changes the determinants of acceptance for judicial institutions by interacting both types of election saliency with legitimacy and specific support. The only significant interaction is between state election saliency and legitimacy. The coefficient indicates that as state election saliency increases the marginal effect of legitimacy decreases. The coefficient for the interaction between state election saliency and specific support is in the right direction but insignificant. Both interaction coefficients for individual election saliency are insignificant. This replicates the pattern found in chapter 3 where it was state-level rather than individual-level election saliency that affects legitimacy.

Table 4.3 – Election Salience and Determinants of Acceptance

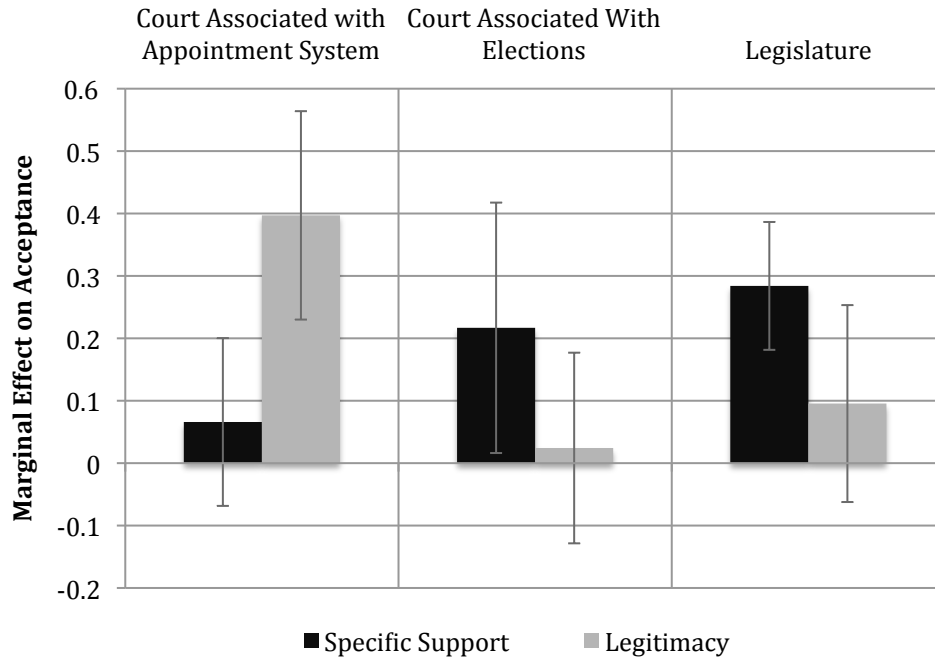
VARIABLES	Court	Court	Legislature
	Acceptance	Acceptance	Acceptance
State Election Salience	.00 (.04)	.09 ^X (.06)	
Individual Election Salience	-.00 (.01)	-.04 (.04)	
Legitimacy	.21* (.05)	.21* (.05)	.10 (.08)
Specific Support	.13* (.05)	.15* (.05)	.28* (.05)
State Salience X Legitimacy		-.26* (.09)	
State Salience X Specific Support		.10 (.09)	
Individual Salience X Legitimacy		.06 (.05)	
Individual Salience X Specific Support		-.00 (.04)	
Control Variables	(Included)	(Included)	(Included)
Constant	.49* (.11)	0.47* (.11)	.24* (.12)
Observations	742	742	197
Number of groups	49	49	42

Robust standard errors in parentheses

* p<0.05

This model is estimated using OLS and includes a random intercept that varies by state. All variables except state and individual-level election salience are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses. Additional control variables are included in the model but not displayed in the table. See Appendix A of chapter 4 for the results of the complete model

Figure 4.1 – Election Saliency and the Determinants of Acceptance



All marginal effects are the change in acceptance when moving either specific support or legitimacy from their minimum to their maximum with individual election saliency held at its mean. The marginal effects for a court associated with elections are calculated for a court at the 95th percentile of state election saliency. For a court associated with appointment systems, state election saliency is held at its 5th percentile. 95 percent confident intervals are included in the figure.

Figure 4.1 displays the predicted marginal effects for specific support and legitimacy for a court that is strongly associated with elections and a court strongly associated with appointment systems. A court that is strongly associated with an appointment system is one at the 5th percentile of state election saliency and one strongly associated with election is one at the 95th percentile of state election saliency. The displayed marginal effects are the change in acceptance when moving either variable from its minimum to its maximum holding state election saliency at

either the 5th or 95th percentile.¹⁸ The results displayed in Figure 4.1 show that as predicted specific support is the predominate determinant of acceptance for a court associated with elections and legitimacy is the predominate determinant of acceptance for a court associated with an appointment system.

For a court associated with an appointment system, legitimacy has a strong and significant ($p < .05$) effect on acceptance. Moving from the minimum to the maximum of the legitimacy index increases acceptance by 40 percent of its total range. Specific support is insignificant, and only moves acceptance by 7 percent of its range. For this type of courts, legitimacy is clearly the predominate determinant of acceptance judgments. For a court associated with elections, the roles reverse. Legitimacy has little effect on acceptance. It is highly insignificant and moving from the minimum to maximum of legitimacy only increases acceptance by 2 percent of its scale. The effect of specific support is significant ($p < .05$) for election-associated courts. Moving specific support from its minimum to maximum increases acceptance by 22 percent of its scale. For courts associated with elections specific support is the predominate determinant of acceptance judgments.

Column 3 of Table 4.3 includes a model examining the determinants of acceptance for the legislature condition. This condition should be similar to the results for elected courts. Figure 4.1 shows the marginal effects of the legislature condition. This allows a direct comparison with a court associated with appointment systems and a court associated with election systems. The pattern and size of the effects for the legislature is the same as for elected courts. In both specific support has a substantial and significant effect on acceptance and legitimacy has an insubstantial and insignificant effect on acceptance.

¹⁸ Individual election salience is held at its mean for both types the appointment and election associated courts.

In summary, these results show that for institutions associated with elections – whether a court or a legislature - specific support is the predominate influence on acceptance and for appointed institutions legitimacy is the predominate influence on acceptance. Additionally, the results show election salience does not directly affect acceptance. Instead it changes the determinants of acceptance.

Experimental Manipulations

The cross-sectional analyses in Table 4.3 are not susceptible to the traditional problems of endogeneity and reverse causation that would normally justify the use of an experimental design. The institutional decision was a new stimulus for the subject's to evaluate, and it was not possible for their acceptance judgments to drive election salience or legitimacy since both were measured prior to the court's decision. The subject's pre-existing issue attitudes on the juvenile life sentence also should not raise endogeneity concerns since everyone was presented with a disagreeable decision. However, the effects attributed to state election salience could still be susceptible to concerns of omitted variable bias. To conclusively pinpoint the causal relationship between election salience and the effectiveness of legitimacy, I will now examine the effects of the experimental manipulations designed to manipulate election salience.

The survey included three experimental manipulations that vary by where a person lived. The experimental manipulations describe the basic outline of the judicial selection method used in a subject's state. In the control condition, the subjects read no information. The breakdown for the experimental manipulation was based on the four traditional categories of selection method. Those living in states with partisan or non-partisan elections read a description of a competitive multi-candidate election system. Those in retention election states read a statement saying judges are initially appointed and then must face an election where the public can choose to remove or

keep the judge. Those in appointment system states read a statement saying judges are appointed for a designated period of time. The effect of each of these manipulations on legitimacy's marginal effect on acceptance will be analyzed separately.

Competitive Election Manipulation

The competitive manipulation is expected to increase election salience and thus should decrease the marginal effect of legitimacy. The simplest manner to test this hypothesis is by interacting the manipulation with legitimacy in a model of acceptance.

However, this simple method fails because for a large portion of the sample the marginal effect of legitimacy is already near zero within the control condition. Figure 4.1 shows that among states highly associated with elections, legitimacy has no effect on acceptance, and all the states at the highest levels of state election salience are competitive election states (see Figure 2.5). If the manipulation is expected to decrease the marginal effect of legitimacy it will inevitably fail if that marginal effect is already zero or near zero. Thus, it is only among those competitive election states that are relatively low on the state election salience measure where the manipulation should decrease legitimacy. Among those states high on this measure, legitimacy is already near zero, and the manipulation cannot decrease its marginal effect any further. To model this dynamic, I include a triple interaction with state-level election salience, the experimental manipulation and legitimacy in a model of acceptance.

Column 1 of Table 4.4 displays the model with this triple interaction, all its constituent terms and the same set of control variables used in previous models. Interpreting a triple interaction is difficult when only examining the coefficients. The main point to take from column 1 of Table 4.4 is that the triple interaction coefficient itself is statistically significant ($p < .05$).

This means that the size of the legitimacy X manipulation coefficient is significantly moderated by state election salience.

Table 4.4 – The Experimental Manipulations and the Effectiveness of Legitimacy

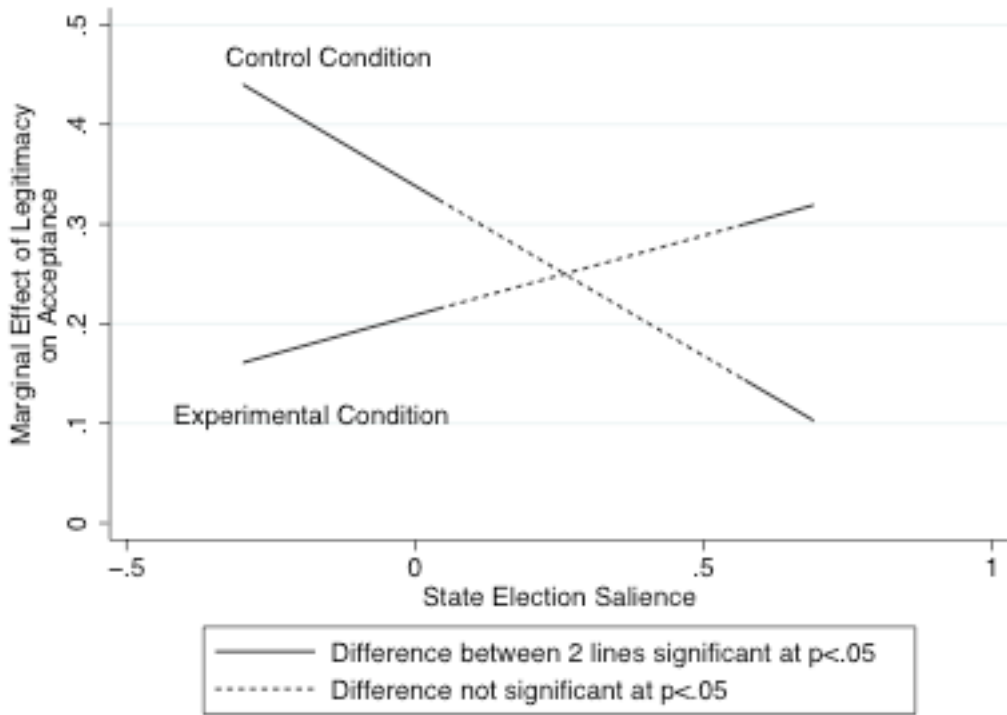
VARIABLES	Competitive Election	Retention Election	Appointment System
	Acceptance	Acceptance	Acceptance
Legitimacy	.34* (.05)	.24* (.10)	.18* (.09)
Experimental Manipulation	.07 (.04)	-.04 (.08)	-.02 (.08)
State Election Salience	.26* (.06)		
Manipulation X Legitimacy	-.13* (.06)	-.00 (.12)	.06 (0.11)
Manipulation X Election Salience	-.37* (.13)		
Legitimacy X Election Salience	-.34* (.12)		
Manipulation X Legitimacy X Election Salience	.50* (.15)		
Control Variables	(Included)	(Included)	(Included)
State Indicator Variables		(Included)	(Included)
Constant	.45* (.07)	.55* (.18)	.64* (.16)
Observations	750	383	359
R-squared		.42	.50
Number of groups	22		

Robust standard errors in parentheses

* p<0.05, ^x p<0.1

All models are estimated using OLS. The model in column 1 includes a random intercept coefficient that varies by state. The models in column 2 and 3 include indicator variables for each state. All variables except state-level election salience are coded with 0 as the minimum and 1 as the maximum. The manipulation is coded 0 for the control condition and 1 for the experimental condition. Additional control variables are included in the model but not displayed in the table. See Appendix A of chapter 4 for the results of the complete model

Figure 4.2 – The Competitive Election Manipulation and the Effectiveness of Legitimacy



The marginal effect of legitimacy is calculated as the change in acceptance when moving legitimacy from its minimum to its maximum. This figure displays the marginal effect from the 5th to 95th percentile of state election salience. When the lines are solid that indicates the experimental manipulation significantly ($p < .05$) changed the marginal effect of legitimacy, or in other words, the legitimacy X manipulation is significant at $p < .05$. The sample for this figure is constrained to the competitive election states.

Figure 4.2 displays the substantive results of this triple interaction. The figure displays the marginal effect of legitimacy across different levels of state election salience. One line represents the control condition and another represents the experimental condition. The effect of the manipulation is represented by the difference between the two lines. If the experimental condition is below the control condition, the manipulation decreased the marginal effect of legitimacy. If the experimental condition is above the control condition, the manipulation increased the marginal effect of legitimacy. When the lines are solid that indicates that the difference between the marginal effect of legitimacy within the experimental and control

conditions is statistically significant at $p < .05$. When the lines are dashed, this difference is not significant.

The line for the control condition is sloping downwards indicating that as state election salience increases the marginal effect of legitimacy decreases in this condition. Because of this pattern the manipulation should only decrease the marginal effect of legitimacy at the lower levels of state election salience. As predicted, at the lower levels of state election salience the marginal effect of legitimacy is significantly smaller ($p < .05$) in the experimental condition than in the control condition. This indicates that the manipulation decreased the marginal effect of legitimacy on acceptance. This difference is significant for all subjects below .04 on the state election salience measure. This includes 25 percent of the sample within the competitive election states. This provides an experimental replication for the results from the cross-sectional analysis in Table 4.3 and Figure 4.1 where increasing election salience decreases the marginal effect of legitimacy on acceptance.

Further scrutiny of Figure 4.2 reveals an unexpected result at higher levels of state election salience. Within these states, the experimental manipulation significantly increases the marginal effect of legitimacy on acceptance. This difference becomes significant ($p < .05$) at the .57 point on the state election salience measure. This includes 11 percent of the sample from the competitive election states. This result is in the opposite direction as predicted, but it could be driven by factors other than an increased marginal effect for legitimacy. Virtually all attitudes toward courts are correlated with legitimacy. If the manipulation increased the marginal effect of one of these attitudes, through spurious correlation the model could display an increase in the marginal effect of legitimacy without this result being true. In the cross-sectional analyses the interaction between specific support and election salience was positive but insignificant (see

Table 4.3). It is possible that the competitive election manipulation significantly increased the marginal effect of specific support for some subjects.¹⁹ This provides a plausible alternative explanation for the increase in the marginal effect of legitimacy seen at high levels of state election salience. Rather than increasing the marginal effect of legitimacy, the manipulation is increasing the marginal effect of specific support.²⁰

Table 4.5 includes a model of acceptance that is constrained to only those subjects within the top 15 percent of the state election salience range for competitive election states. This model includes four states, and it is not feasible to run a multi-level model with this small number of groups. Instead, the model includes an indicator variable for each state to capture any state-level differences. Column 1 displays a model that includes all the control variables and interacts the manipulation with both legitimacy and specific support. The interaction of legitimacy and the manipulation is negative and insignificant. From this result it does not appear that the manipulation increased the marginal effect of legitimacy among high election salience states. The interaction of specific support and the manipulation is positive and approaches statistical significance ($p=.1$, two tailed). In a one-tailed test which is appropriate because I have a directional hypothesis, this result is barely on the other side of statistical significance with a $p<.06$. These interaction results indicate that at high levels of election salience the manipulation does not seem to increase the marginal effect of legitimacy but instead increases the marginal effect of specific support.

¹⁹ If an interaction between specific support and the competitive election manipulation is added to the model in column 1 of Table 4.4 the coefficient is $-.02$ with a $p=.74$. This shows that the manipulation did not increase the marginal effect of specific support among the whole sample. However, the manipulations effect on specific support could be constrained to those in high election salience states. It could be that the combination of a high election salience state and the manipulation super-charged the effect of specific support.

²⁰ Among the competitive election states, specific support and legitimacy are correlated at $r=.36$.

Table 4.5 – Specific Support, Legitimacy and the Competitive Election Manipulation Among the High Election Salience States

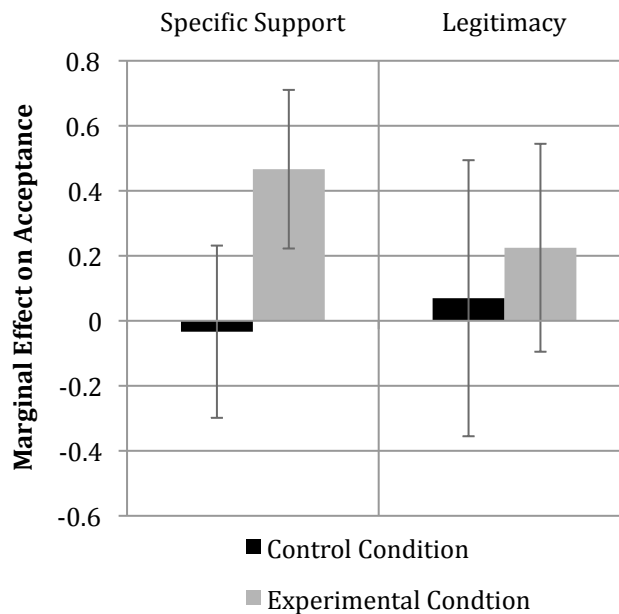
VARIABLES	(1) Acceptance	(2) Acceptance
Legitimacy	.23 ^x (.13)	.07 (.16)
Specific Support	-.04 (.14)	-.03 (.12)
Experimental Manipulation	-.21 (.14)	-.48* (.15)
Manipulation X Legitimacy	-.13 (.25)	.16 (.28)
Manipulation X Specific Support	.33 ^o (.20)	.50* (.18)
Control Variables	(Included)	(Excluded)
State Indicator Variables	(Included)	(Included)
Constant	.61* (.18)	0.42* (.09)
Observations	131	134
R-squared	.35	.13

Robust standard errors in parentheses

* p<0.05, ^x p<0.1, ^o p=.10

All models are estimated using OLS and include indicator variables for each state. All variables except state-level election salience are coded with 0 as the minimum and 1 as the maximum. The manipulation is coded 0 for the control condition and 1 for the experimental condition. Additional control variables are included in the model but not displayed in the table. See Appendix A of chapter 4 for the results of the complete model

Figure 4.3 – Specific Support, Legitimacy and the Competitive Election Manipulation Among the High Election Salience States



All marginal effects are the change in acceptance when moving either specific support or legitimacy from their minimum to their maximum. 95 percent confidence intervals are included. The marginal effects were calculated from column 2 of Table 4. The sample for this figure is constrained to the top 15 percent of the sample within competitive election states.

Column 2 of Table 4.5 shows a simpler model that only includes the manipulation, specific support, legitimacy, and their interactions. The results are clearer in this model. The interaction between specific support and the manipulation is positive and significant at $p < .05$ (two-tailed), and the interaction between legitimacy and the manipulation is insignificant. Figure 4.3 displays the marginal effects of specific support and legitimacy within each condition for the model in the column 2. These marginal effects are the change in acceptance when moving from the minimum to the maximum of each respective variable. 95 percent confidence intervals are included. As shown, the marginal effect of legitimacy is insignificant in both conditions. Specific support is significantly positive in the experimental condition and insignificant in the control

condition. The substantive effect of specific support within the experimental condition is large. Moving from the minimum to maximum of specific support increases acceptance by 47 percent of its range.

In summary, the competitive election experiment results show that in those states low in state election salience the experimental manipulation designed to increase election salience reduces the marginal effect of legitimacy. Among those subjects in states high in election salience, the manipulation increased the marginal effect of specific support.

Other Manipulations

The competitive election manipulation is the purest test of my theory that increases in election salience decreases the marginal effect of legitimacy. Since retention elections contain both election and appointment elements, the retention election manipulation has the potential to increase or decrease election salience depending on how the text is interpreted by the subject. Since the manipulation probably increases the marginal effect of legitimacy for some people and decreases it for others, the average effect of the manipulation will be zero. Unfortunately I have no measure of how people interpret retention elections so I cannot differentiate these two types of people. Column 2 of Table 4.4 includes a model of acceptance where the retention election manipulation is interacted with legitimacy. The sample for this model only contains individuals within retention election states. Because of the small number of states, it is not feasible to run a multi-level model. Instead, I include a set of indicator variables for each state. The interaction between legitimacy and the manipulation is .00, indicating that on average the manipulation did not change the marginal effect of legitimacy.

The appointment manipulation should decrease election salience and as a result increase the marginal effect of legitimacy. However, this manipulation should be less powerful than the

competitive election manipulation. The selection methods used in appointment system states are much more highly associated with appointment systems than the selection methods used in competitive election states are associated with election systems (see chapter 2 for a full discussion). The competitive election manipulation worked among those people in states with an election salience less than .04 or in states with selection methods that are equally associated with elections and appointment systems or predominately associated with appointment systems. These are the places where there is a mismatch between the natural level of election salience and the information in the manipulation. If the same pattern held for appointment systems, the appointment manipulation would only work for those people in states at 0 or above on the state election salience measure. This applies to 1 percent of the sample in the appointment system states. Because of this it is unlikely that the appointment manipulation will work, and as shown in column 3 of Table 4.4, the interaction between legitimacy and the appointment manipulation is insignificant.

Discussion and Conclusion

These results show using both experimental and observational analyses that among institutions associated with appointment systems acceptance is predominately driven by legitimacy and among institutions associated with elections acceptance is predominately driven by specific support. For legitimacy, as observed state election salience increased the marginal effect of legitimacy on acceptance for judicial institutions decreased. Additionally, for both courts associated with elections and legislatures the marginal effect of legitimacy on acceptance was insubstantial and insignificant. This shows that the legitimacy of any type of institution associated with elections does not affect acceptance. These observational analyses were complemented and replicated by the experimental results. The competitive election manipulation

significantly decreased the marginal effect of legitimacy among those people in states where the marginal effect was not already near zero. For specific support, the interaction between specific support and measured state election salience was positive but not statistically significant.

However, specific support only significantly affected acceptance among those in high election salience states or in the legislature condition. The experimental results for specific support provide some additional evidence that increases in election salience increase the marginal effect of specific support. In high election salience states, the competitive election manipulation significantly increased the marginal effect of specific support.

Overall, the results for legitimacy are stronger than the results for specific support. Both the experimental and observational analyses support a strong conclusion that the more an institution becomes associated with elections the smaller legitimacy's marginal effect on acceptance. The conclusion is less clear for specific support. The evidence suggests that an increase in election salience causes an increase in the marginal effect of specific support on acceptance, but the null hypothesis that specific support has an equal effect across election salience was not strongly rejected. This lack of a conclusive result on specific support does not diminish the overall conclusion that specific support is the predominate determinant of acceptance for institutions associated with elections and legitimacy is the predominate determinant of acceptance for institutions associated with appointment systems. The safest conclusion is that both specific support's ability to persuade and legitimacy's ability to induce acceptance directly are available for appointed institutions while only specific support is available to elected institutions. Since the effect of legitimacy on acceptance is larger than the effect of specific support, appointed institutions will still predominately rely upon legitimacy even if they can still use specific support as an alternative indirect route to acceptance.

This pattern of results shows these two types of institutions must use different strategies to induce the maximum amount of acceptance among the mass public. Institutions associated with appointment systems accomplish this by directly converting their institutional legitimacy into acceptance. Relying upon legitimacy to induce acceptance gives this type of institution a relatively stable source of support that it can use to induce acceptance. This “reservoir of support” will not dissipate quickly in the face of displeasing decisions in the same way as specific support (Easton 1965). This ability to have a stable source of support to induce acceptance is especially important to judicial institutions for multiple reasons. First, every political system requires an institution of de-politicization that can defuse political conflict by inducing acceptance of disagreeable decisions. Without this type of institution, stress will build up in the political system threatening to reach the critical thresholds that threaten the system’s stability (see chapter 1 for an in-depth discussion of this). Second, courts do not have the benefit of a direct mechanism to enforce their decisions. The legislature controls the purse strings and the executive has the bureaucracy, but whenever the judiciary issues a new decision, for the decision to be enforced it must rely upon its support among the mass public (Dahl 1957; Murphy and Tanenhaus 1968; Adamany and Grossman 1983; Vanberg 2005; Whittington 2007; Clark 2011).

Only a court associated with an appointment system can accomplish these two tasks because a court associated with elections must rely upon specific support to induce acceptance. This means that for elected courts the acceptance of current and future decisions is contingent upon satisfaction with past decisions. These courts must cater to the whims of mass public opinion or risk having their decisions unenforced and challenged by public. In the short term, an elected court could act in a counter-majoritarian fashion and induce acceptance but after a few

disagreeable decisions the once high level of specific support will vanish leaving this court with no way to induce acceptance. That elected court would still probably be considered legitimate because its legitimacy is based on elections, but this type of legitimacy does not affect acceptance. This situation of an elected court with a high magnitude of legitimacy but a low level of specific support shows the importance of examining more than just the magnitude of legitimacy. Even though the elected court is considered legitimate it is unable to fulfill its role as an institution of de-politicization and cannot use its support among the mass public to enforce its decisions. This leaves this highly legitimate elected court nevertheless ineffective and inept.

One thing lacking in the analysis was a finding that the effect of specific support on acceptance is mediated by a change in policy attitudes. Any attempt to do so would have failed because of the small effect of specific support on policy attitude change. This would appear to somewhat undermine the theoretical story proposed here, but that is not necessarily the case. Perhaps, what is occurring is that people use different criteria to make acceptance judgments for elected and appointed institutions. For appointed institutions, they ponder the legitimacy of that institution and whether the institution has the moral and legal authority to make a decision. For elected institutions, they instead think about the policy implications of a decision.

Specific support is based on satisfaction with past policy output, and if specific support is the predominate influence on acceptance that indicates that acceptance is being driven by policy concerns. For some people, while pondering these policy concerns they shift their policy attitudes because they are persuaded by the persuasive cue of the court's decision. For others, they may not change their policy attitudes but instead they agree with the decision for non-policy reasons. For example, a person could believe that the court was making the correct decision based on the Constitution even if that person does not agree with the policy implications of a

decision. This thought process still relies upon specific support because it is based on the content of a decision and a person believing a court is making the correct decision. If that person believes the elected court made an incorrect decision, they would support challenging the decision. This is a fundamentally different process than what occurs when people use legitimacy as the guide for acceptance. When legitimacy is driving acceptance for decisions by appointed institutions, the content of a decision should not affect acceptance judgments. All that matters is the institution making the decisions. Even people who believe a decision is incorrect based on policy and based on constitutional interpretation will still accept the decision because the court has the moral and legal authority to make the decision.

Fourth Property of Institutional Support

In chapter 1, I laid out three properties of legitimacy. This chapter concentrated on the property of effectiveness. It was defined as the degree to which the magnitude of legitimacy attributed to an institution is converted into *acceptance* of specific decisions. The results presented in this chapter show the importance of a fourth property of institutional support called persuasiveness. This property of institutional support is defined as the degree to which the magnitude of legitimacy attributed to an institution is converted into *agreement with the policy implications* of specific decisions. Specific support was shown to be higher on the property of persuasiveness than legitimacy. While chapter 1 concentrates on defining the multiple properties of legitimacy attitudes, these three and now four properties can be applied to all form of institutional support. Future work should examine under what circumstances other forms of institutional support like trust and favorability are persuasive and/or effective.

State Election Salience and Judicial Selection Method

As with the results in chapter 3, it is again state election salience that strongly affects legitimacy rather than the four traditional categories of judicial selection method. This shows the four traditional categories are an over-simplification of the variation in selection method across the states, and the best method for understanding how selection method affects legitimacy is through election salience.

Chapter 5 – The Stability of Legitimacy

The survival and persistence of a political system must be based on more than satisfaction with the outputs of the system. There will always be times when the economy falters, a disliked political faction wins an election or the incumbent government makes a series of displeasing decisions. It is during these times that a political system and its institutions must depend upon legitimacy to help them weather these times of turmoil and displeasure. The reliance of political institutions and systems on legitimacy has been noted frequently (Clark 2011; Whittington 2007; Rosenberg 1991; Murphy 1964), and much of the time scholars make a distinction between diffuse and specific support first noted by Easton (1965). The major distinction between these two forms of support is that specific support is dependent upon satisfaction with the outputs of a political system while diffuse support is independent, at least in the short term, of satisfaction or dissatisfaction with the outputs. Easton (1965) describes diffuse support – of which he says legitimacy is the most important form – as “a reservoir of support upon which a system may draw credit in times when things are going badly” (pg 249). The independence of diffuse support and legitimacy from dissatisfaction with outputs is what allows them to help a political institution and system weather those times of negative feelings. If as soon as a displeasing output occurs legitimacy withers, legitimacy would not be available to help weather the storm caused by the displeasing output. Because of this it is essential to understand the circumstances under which legitimacy is resistant to displeasing outputs and those circumstances under which it is not.

The current literature concentrates on whether legitimacy resists the negative influence of displeasing policy decisions, mostly in the context of the U.S. Supreme Court (Gibson et al. 2003b, Bartels and Johnston 2013). Some studies say it has virtually no effect (Gibson et al. 2003b; Gibson 2007) while others say it has a substantial effect (Bartels and Johnston 2013). Rather than asking *whether* legitimacy resists the negative influence of displeasing decisions the more realistic question is *when* legitimacy resists this negative influence. The resistance of legitimacy to the negative influence of displeasing decisions is a property of legitimacy attitudes that varies by both individual and circumstance. The discussion in chapter 1 defined this property as the stability of legitimacy. Each form of legitimacy – that derived from principled decision-making and that derived from elections – is resistant to the negative influence of displeasing decision but under different circumstances. The next two sections describe those circumstances.

Stability and Legitimacy Derived Through Elections

Electoral democracy is based upon the idea that through elections the mass public chooses between two or more policy agendas. The winner of that election is given the chance to implement its policy agenda, and the losing side forms a loyal opposition. At the next election, these two or more sides compete again to determine a winner. The possibility of losing an election is built into the concept of electoral democracy, and supporting electoral democracy requires a person to support the system even when his or her preferred side loses. Because of this, if someone supports electoral democracy losing an election should not cause a decrease in legitimacy derived through elections. The existing empirical evidence supports this and shows that an electoral loss does not decrease legitimacy in advanced democracies as long as the election does not violate democratic norms (Esaiasson 2011). One aspect of an election is that the winning side implements their policy agenda. Just as an electoral loss should not lead to a

decrease in legitimacy, the implementation of a displeasing policy should also not lead to a decrease in legitimacy derived through elections.

Stability and Legitimacy Derived From Principled Decision-Making

The stability of legitimacy derived from principled decision-making is governed by a different mechanism. This type of legitimacy should resist the negative influence of a displeasing decision as long as the institution is perceived as using a principled decision-making process. Gibson and Caldeira (2003b, 2009) developed Positivity Theory as an explanation for the resistance of the U.S. Supreme Court's legitimacy to the negative influence of displeasing decisions. The theory states that the legitimacy of the U.S. Supreme Court is contingent on a perception that it uses a principled decision-making process (Gibson and Caldeira 2011), and it can help explain what affects the stability of this type of legitimacy.

Gibson et al. (2003b, 2009) propose that displeasing decisions do not decrease the Court's legitimacy because of a shirking mechanism. This shirking mechanism relies on the perception that judges use a principled decision-making process. When judges are perceived as using a principled decision-making process, they are able to shirk personal and institutional responsibility for decisions by placing the blame on the decision-making principles. In essence, judges implicitly assert that the displeasing decision is not the fault of the institution but the fault of the principles used to make the decision. These principles forced the judges to make the decision, and they had no choice in the matter. Because no responsibility for the decision falls upon the institution or the judges, the legitimacy of the institution does not decrease. Since this mechanism relies upon a perception of principled decision-making, when the court is perceived as using a politicized decision-making process the shirking mechanism fails. For this reason, it is

only when an institution is perceived as using a politicized decision-making process that a displeasing decision decreases legitimacy derived from principled decision-making.

Hypotheses

Each type of legitimacy is associated with a different type of institution. Institutions associated with elections will have legitimacy derived from elections, and institutions associated with appointment systems will have legitimacy derived from principled decision-making. This proposition combined with the discussion above leads to two major hypotheses concerning the stability of legitimacy.

H1: For institutions associated with appointment systems, a displeasing decision decreases legitimacy only when the institution is perceived as using a politicized decision-making process.

H2: For institutions associated with elections, a displeasing decision decreases legitimacy only when someone does not support electoral democracy. Since Americans overwhelmingly support electoral democracy (McClosky and Zaller 1984), in this study a displeasing decision should never decrease legitimacy for this type of institution.

As with the previous chapter, the analysis uses both observational and experimental methods to explore these hypotheses. I will examine the effect of observational election salience on whether a displeasing decision causes a decrease in legitimacy. The survey includes a condition asking about state legislatures, and I will compare the dynamics of legitimacy's stability for election- and appointment-associated courts to a state legislature. If an association with elections causes the effects found for judicial institutions, the results for state legislatures should be similar to election-associated courts. Following this, I will use an experiment embedded in the survey to manipulate election salience.

The above hypotheses concern variation between different types of institutions, but the dynamics of legitimacy change will also vary based on a person's attitude toward the issue involved in the decision. Everyone in the sample received a decision concerning the juvenile life sentence, but the public's attitude on this issue as with all issues differs on a variety of dimensions that includes strength and perceived importance (Krosnick and Petty 1995). If someone is presented with an issue he or she considers unimportant or on which he or she does not have a strong opinion, their legitimacy perceptions should not decrease. This leads to two more hypotheses.

H3: Legitimacy will only decrease when a person holds a strong opinion on the issue involved in the decision.

H4: Legitimacy will only decrease when a person perceives the issue involved in the decision as important.

Study Design

Testing the stability of legitimacy requires presenting the subjects with a displeasing policy decision. For this study, every subject was initially asked for his or her position on the juvenile life sentence with a dichotomous item. A four-level strength item and an item assessing the importance of the issue to them followed the dichotomous item. Following this, the subjects were presented with items that measured a variety of attitudes toward the institution that included legitimacy and politicization perceptions. They were then presented with a decision from the institution that opposed their stated position. Next, their acceptance of the decision was assessed, and they were again asked the dichotomous and strength juvenile life sentence attitude items. Finally, the four items assessing legitimacy were administered again. This provides a measure of

legitimacy change. For more details on the study design and scale construction see the study design and measurement section of chapter 4.

Measurement

The items and scales used to measure legitimacy and politicization perceptions are the same as in previous chapters. The only new measures presented in this chapter are legitimacy change, issue disagreement and perceived issue importance. The measure of legitimacy change subtracts the pre-decision legitimacy scale from the post-decision legitimacy scale. A positive number indicates a legitimacy increase, and a negative number indicates a legitimacy decrease. This measure was created from the legitimacy scales prior to the zero as minimum and one as maximum transformation. Each untransformed legitimacy scale has 17 points. A one on the legitimacy change scale represents someone who moved one point (i.e. agree to strongly agree) on one of the four legitimacy items. The average level of legitimacy change is -.21. This is significantly different from 0 at $p < .05$ but substantively small. The majority of the sample exhibited no or little legitimacy change. For 34 percent of the sample, legitimacy did not change. Legitimacy decreased by one point for 18 percent, and legitimacy increased by one point for 16 percent. Legitimacy decreased by more than one point for 19 percent, and legitimacy increased by more than one point for 12 percent.

It is essential to measure a person's level of disagreement with the policy implications of the institution's decision. All subjects were given a decision with which they initially disagreed, but not everyone held that opinion with the same strength. According to H3, those who hold a weak attitude should exhibit less legitimacy change than those who hold a strong attitude. Additionally, as shown in chapter 4 some people were persuaded by the court's decision and changed their policy attitudes concerning the juvenile life sentence. The legitimacy a person

attributes to an institution should only decrease when the institution makes a displeasing decision. The measure of post-decision policy agreement is measured with the items administered after the decision. The four-level strength follow-up is combined with the initial dichotomous item to form an 8-point post-decision policy attitude measure. This is coded so that higher numbers indicate stronger disagreement or weaker agreement with institution's decision. It is recoded with 0 as its minimum (very strong agreement) and 1 as its maximum (very strong disagreement). After the institution announces the decision, the vast majority of the sample still disagrees with it. Only 9 percent of the sample switched their issue position from disagreement prior to the decision to agreement following it. 23 percent very strongly disagreed with the decision, 30 percent strongly disagreed, 31 percent somewhat strongly disagreed and 6 percent disagreed not strongly at all.

Perceived issue importance is measured using an item that reads: "How important would you say the issue of the juvenile life sentence without the chance of parole is to you personally?" The four answer options were very important (12%), important (23%), somewhat important (41%), and not important at all (24%). The number in the parentheses is the percentage of the sample that responded with that option.

Data Analysis

Each hypothesis outlined above adds an additional condition to the circumstances under which a displeasing decision will cause a decrease in legitimacy. Each of these hypotheses build upon one another, and it is only when all the conditions are met that a displeasing decision causes a decrease in legitimacy. For example, if an institution is highly associated with elections, it should not matter whether the issue is important or not because a displeasing decision never decreases legitimacy for this type of institution. For a displeasing decision to cause a decrease,

the institution must be associated with an appointment system, be perceived as politicized, and the issue must be one on which the person considers important and on which he or she has a strong opinion. The analysis starts off by looking at the simplest model of the effect of issue disagreement on legitimacy change. Each subsequent model tests another hypothesis by adding one more additional condition. Since all conditions must be met for the decision to decrease legitimacy, the additional conditions are included as interactive terms.

The first models in Table 5.1 examine the average effect of issue disagreement on legitimacy change across all types of judicial institutions. The sample includes both those associated with elections and appointment systems. The sample is constrained to the control condition. Since the experimental manipulation varies across the category of judicial selection method if the experimental condition was included in the analysis, it would be impossible to determine whether the results were driven by the experimental manipulation or the observed variation across the states. The models include a random intercept that varies by state and the same set of control variables as used in the previous chapter with the one addition of favorability toward the institution.²¹

Column 1 of Table 5.1 shows the model without any interactions. The effect of issue disagreement is significant at $p < .05$ and negative. At the 5th percentile of issue disagreement (Somewhat Strongly Agree), the predicted level of legitimacy change with all other variables held at their mean is slightly positive (.18) but statistically insignificant ($p = .29$). It is only when someone strongly disagrees with the decision that the predicted level of legitimacy change (-.18)

²¹ This favorability item reads “How favorable or unfavorable do you feel toward the (institution name) on a scale from 1 to 100, with 1 indicating extremely cold and unfavorable and 100 indicating extremely warm and favorable?” The item was excluded from previous analyses because it is usually seen as a measure of specific support (Gibson et al. 2003a), and the models already included one measure that more directly taps into specific support. For the legitimacy change models it had to be included because it had a large effect independent and in the opposite direction of the specific support measure already included.

becomes significantly negative at $p < .05$. When someone very strongly disagrees with the decision, the negative effect increases to $-.33$ and is significant at $p < .05$. These results support H3 but are substantively small. The small effects are not unexpected because additional factors like politicization perceptions and issue importance should moderate when strong issue disagreement decreases legitimacy.

Politicization Perceptions

The first moderating factor added to the model is politicization perceptions. It is only when a court is perceived as politicized that issue disagreement should cause a decrease in legitimacy. The model in column 2 of Table 5.1 adds an interaction between issue disagreement and politicization perceptions to test this hypothesis. This interaction is significant at $p < .05$ and negative. At the 5th percentile of politicization, the marginal effect of issue disagreement is slightly positive ($b = .70$) and insignificant. At the 95th percentile of politicization, the marginal effect is negative ($b = -2.26$) and significant at $p < .05$. Figure 5.1 shows the substantive interpretation of this interaction. It displays the predicted level of legitimacy change across different levels of politicization and issue disagreement. The predicted values were calculated holding all other variables at their mean. Each line represents a different level of politicization. The lines are shown from the 5th to 95th percentile of issue disagreement. This figure does not include 95 percent confidence intervals because a graph with multiple lines and multiple confidence intervals is difficult to interpret. Instead, the lines are solid when the predicted level of legitimacy change is significantly different from 0 at $p < .05$. When the lines are dotted, the predicted level of legitimacy change is not significantly different from 0 at $p < .05$.

When a person agrees with the institution's decision, the predicted level of legitimacy change is insignificant across all levels of politicization perceptions, and the marginal effect of

politicization perceptions is statistically insignificant. For those people who either strongly or very strongly disagree with the decision, politicization perceptions have a statistically significant effect ($p < .05$) and moderate the effect of a displeasing decision on legitimacy change. For a person who very strongly disagrees with the decision, at the 50th percentile of politicization perceptions (.5) the predicted level of legitimacy change is -.33. At the 95th percentile of politicization perceptions, this increases to -1.09. The legitimacy index is a 17-point scale, and thus a person at the 95th percentile of politicization perceptions who very strongly disagrees with the decision is predicted to decrease their legitimacy by about 1/17 of the legitimacy scale. The only time the predicted level of legitimacy change is negative is when people hold both a strong opinion in opposition to the decision and perceive the institution as using a politicized decision-making process. These results reveal that politicization perceptions do not directly affect legitimacy change but instead amplify the power of a displeasing decision.

Figure 5.1 – Politicization, Issue Attitudes and Legitimacy Change

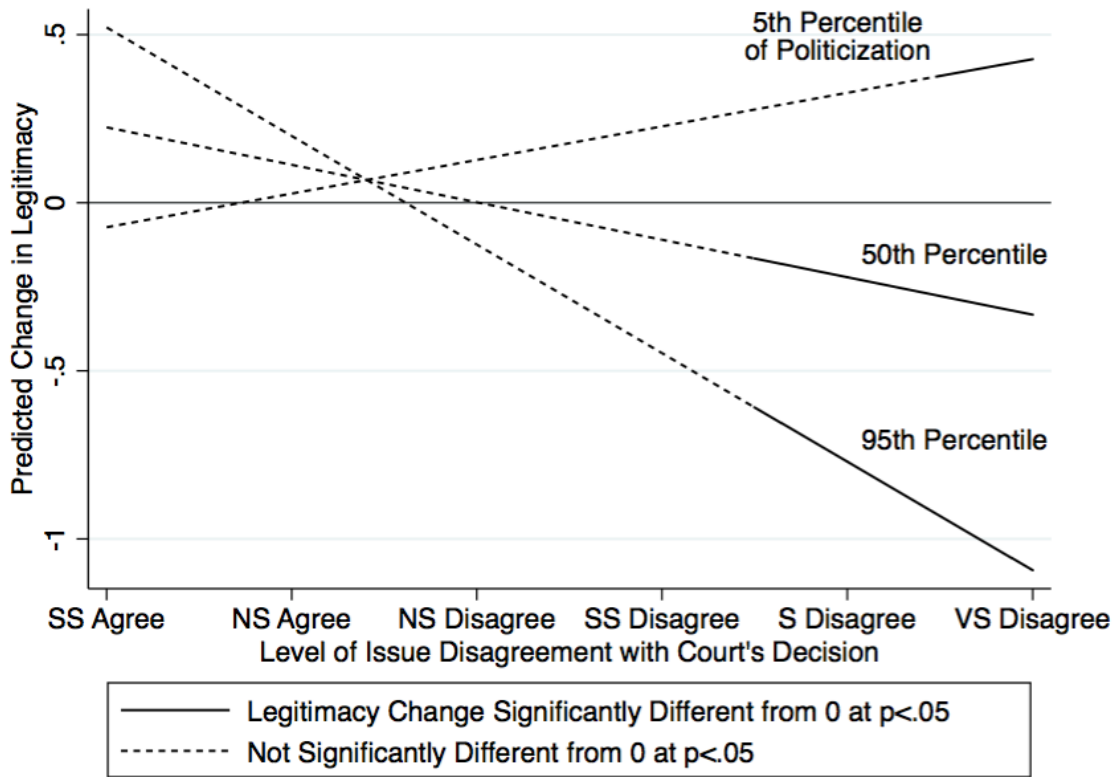
VARIABLES	Court	Court	Court
	Legitimacy Change	Legitimacy Change	Legitimacy Change
Issue Disagreement	-.72* (.34)	1.44 ^X (.82)	-1.81 (1.28)
Politicization Perceptions	-1.41* (.66)	2.16 (1.42)	-2.51 (1.94)
Issue Importance	-.06 (.26)	.01 (.26)	-3.45 (2.57)
Issue Disagreement X Politicization		-4.44* (1.57)	2.90 (2.72)
Issue Disagreement X Importance			5.47 ^X (3.216)
Politicization X Importance			8.40 ^X (5.03)
Issue Disagreement X Politicization X Importance			-12.62* (6.32)
Additional Control Variables	Included	Included	Included
Constant	2.34* (.90)	.54 (1.18)	2.48* (1.05)
Observations	744	744	744
Number of groups	49	49	49

Robust standard errors in parentheses

* p<0.05, ^X p<0.1

All models are estimated using OLS and includes a random intercept that varies by state. All variables except the dependent variable are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses, and all analyses include only the judicial institution condition. The dependent variable is legitimacy change in all models. See Appendix A of chapter 5 for the complete models.

Figure 5.1 – Politicization, Issue Disagreement and Legitimacy Change



The predicted change in legitimacy is displayed from the 5th to 95th percentile of issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. Each line represents the predicted value of legitimacy change at different percentiles of politicization perceptions. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$. The data for this figure comes from column 2 of Table 5.1. The predicted values are calculated with all other variables held at their means.

Figure 5.1 reveals an unexpected finding. At the 5th percentile of politicization perceptions when a person very strongly disagrees with the institution’s decision, the predicted level of legitimacy change is significantly positive at $p < .05$. Positivity Theory (Gibson et al. 2003b, 2009) provides a possible reason for why a displeasing decision could lead to an increase in legitimacy under these circumstances. That theory states that pleasing decisions increase the

U.S. Supreme Court's legitimacy, but because of the shirking mechanism displeasing decisions do not cause a decrease in legitimacy. The evidence presented in Figure 5.2 suggests that perhaps the increase in legitimacy can also result from a displeasing decision, as long as the institution is perceived as using a principled decision-making process. This finding that legitimacy increases for those at the 5th percentile of politicization who very strongly disagree with the decision emerges throughout the analysis. What conditions lead to an increase in legitimacy is an interesting question that should be addressed in future studies, but since the emphasis in this chapter is on what leads to a decrease in legitimacy, this finding will not be discussed in the later analysis.

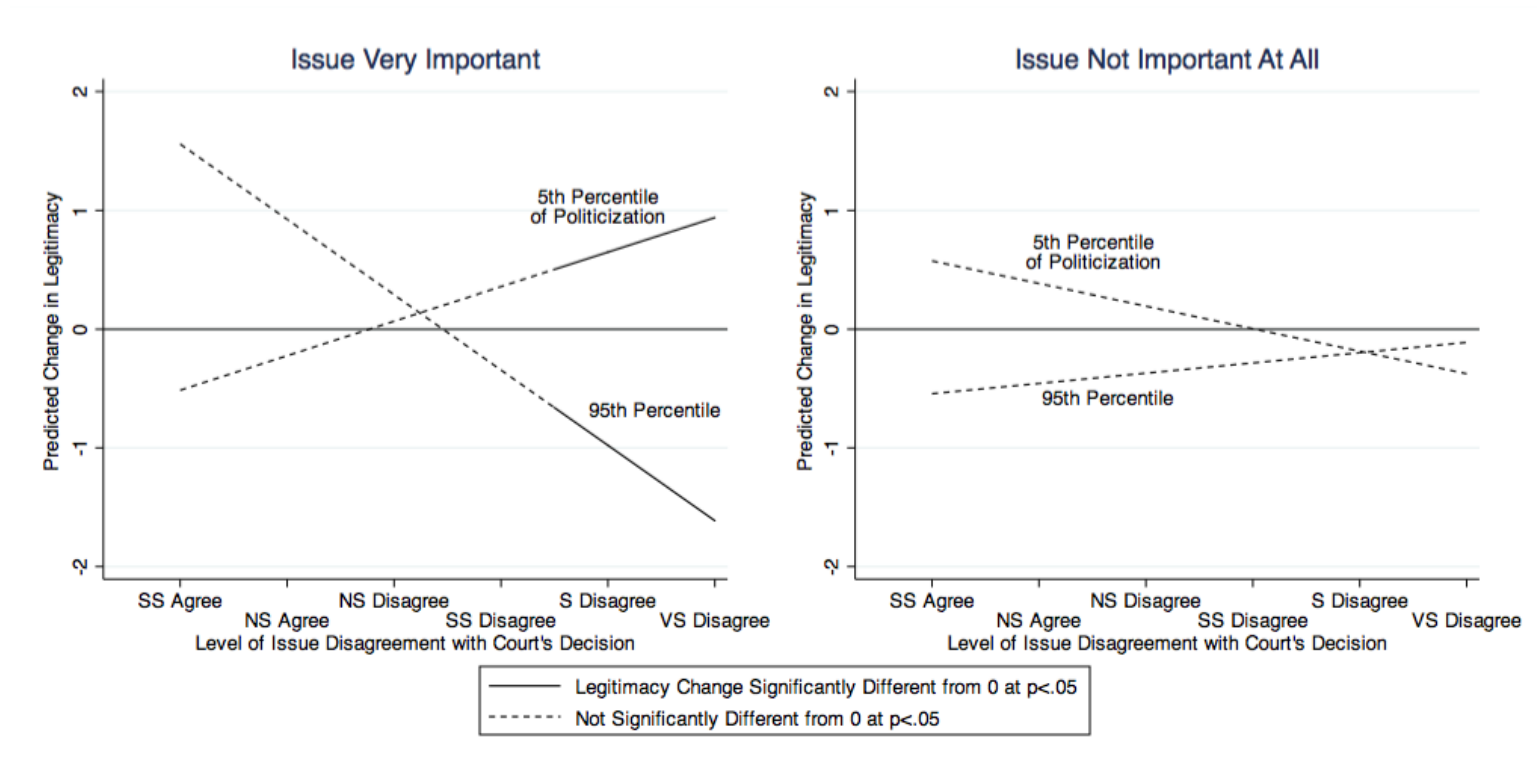
Issue Importance

H4 adds an additional condition and states that legitimacy should only decrease when the issue involved in the decision is perceived as important. Testing the moderating effect of issue importance requires including a triple interaction between issue importance, politicization perceptions and issue disagreement. Column 3 of Table 5.1 shows the model with this triple interaction included. The triple interaction is significant at $p < .05$. This indicates that the perceived importance of the issue moderates the interaction between politicization perceptions and issue disagreement. The interaction between politicization perceptions and issue disagreement is significantly negative at $p < .05$ when the issue is perceived as important or very important. Figure 5.2 displays the substantive interpretation of this interaction. It shows the predicted level of legitimacy change across different levels of politicization and issue disagreement. The graph on the right displays the predicted legitimacy change at the lowest level of importance (issue not important at all), and the graph on the left displays the predicted level of legitimacy at the highest level of importance (issue very important).

The low importance graph shows that across all levels of politicization and all levels of issue disagreement the predicted level of legitimacy change is never significant at $p < .05$. Additionally, the marginal effect of politicization perceptions is never significant at $p < .05$ across all levels of issue disagreement. This shows that whenever the issue is considered of low importance the decision has no effect on legitimacy. In the high importance graph, the predicted level of legitimacy change is significantly negative at $p < .05$ only at high levels of politicization and when people strongly disagree with the decision. At the 95th percentile of politicization the predicted level of legitimacy change is significantly negative for only those people who either strongly disagree or very strongly disagree with the decision. Additionally, the marginal effect of politicization perceptions is only significant at $p < .05$ when a person either strongly or very strongly disagrees with the decision. For those people who very strongly disagree with the decision, at the 95th percentile of politicization legitimacy is predicted to *decrease* by 1.61 while at the 5th percentile of politicization legitimacy is predicted to *increase* by .94.²² These results support H4 and show that perceived issue importance has a strong influence on whether a decision leads to a decrease in legitimacy. Only when the issue is considered important will a decision affect legitimacy.

²² This increase in legitimacy for those who consider the issue important, disagree with the decision, and perceive the court as using a principled decision-making process is not a result of a few influential data points. Appendix B of chapter 5 discusses multiple tests for influential data to confirm the findings that legitimacy is predicted to increase for these people.

Figure 5.2 – Perceived Issue Importance and Legitimacy Change



The predicted change in legitimacy is displayed from the 5th to 95th percentile of issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. Each line represents the predicted value of legitimacy change at different percentiles of politicization perceptions. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$. The data for this figure comes from column 3 of Table 5.1. The graph on the left shows the predicted values when importance is held at the 5th percentile (0), and the graph on the right shows the predicted values when importance is held at the 95th percentile (1). The predicted values are calculated with all other variables held at their means.

Election Salience and Stability of Legitimacy

The final moderating factor added to the model is election salience. The analysis above showed that a displeasing decision only causes a decrease in legitimacy when someone holds a strong opinion, considers the issue important and perceives the institution as using a politicized decision-making process. This pattern should only apply to institutions associated with appointment systems. For institutions associated with elections, legitimacy should never decrease as a result of a displeasing decision.

The models in Table 5.2 examine the effect of election salience on legitimacy change.²³ The models in the first two columns include only the control condition within the judicial institution condition. They include a random intercept that varies by state and same set of control variables as the previous models. Since the previous analysis shows that displeasing decisions only affect legitimacy change when the issue is perceived as important, the sample is also constrained to those people above the midpoint on the issue importance scale.²⁴ Before moving on to the interactive models, column 1 of Table 5.2 examines the average effect of election salience on legitimacy change. The dependent variable in Column 1 of Table 5.2 is legitimacy change, and the model includes individual-level and state-level election salience. Both

²³ This chapter omits the analysis using the four traditional categories of judicial selection method. The analysis requires a model with four triple interactions and is difficult to interpret. Additionally, the previous chapters have shown that election salience has a stronger relationship with legitimacy than the four traditional categories. Rather than include four traditional categories analysis in the main text, it is in Appendix C of chapter 5. The results generally back up the hypotheses with a displeasing decision having less of an effect on the legitimacy of competitive election courts than on the legitimacy of appointment system/retention election courts, however; a displeasing decision still significantly decreases legitimacy for elected courts and politicization perceptions has a negative direct effect on legitimacy change for elected courts.

²⁴ The only way to test the interactive hypotheses without using a median split of at least one variable would be to run a model with a quadruple interaction between issue importance, election salience, issue disagreement and politicization perceptions. When this model is run, the quadruple interaction is significant at $p < .05$, and the results are virtually identical to what is shown in Figure 5.3. However, to keep the analysis reasonably simple I run a triple interaction on just those in the upper half of perceived issue importance.

coefficients are insignificant and insubstantial. This shows that neither type of election salience seems to affect the average level of legitimacy change.²⁵

Column 2 of Table 5.2 examines how both types of election salience moderate the interaction between politicization and issue disagreement in a model of legitimacy change. Both state-level and individual-level election salience are included in separate triple interactions with politicization and issue disagreement. As with the results from chapters 3 and 4, it is state-level rather than individual-level election salience that affects legitimacy. The triple interaction between state election salience, politicization and issue disagreement is significant at $p < .05$. At the 95th percentile of state election salience, the interaction between politicization perceptions and issue disagreement is insignificant and slightly positive ($b = 2.98$, $p = .57$). At the 5th percentile of state election salience, the interaction is significant at $p < .05$ and highly negative ($b = -18.4$). This indicates that for courts associated with appointment systems (5th percentile) politicization perceptions moderate the effect of issue disagreement on legitimacy change, but for courts associated with elections (95th percentile), politicization perceptions have no moderating effect on issue disagreement.

To understand the substantive meaning of this triple interaction, Figure 5.3 displays the predicted level of legitimacy change across issue disagreement for different levels of politicization. The graph on the far left displays the predicted levels of legitimacy change for a court at the 5th percentile of election salience (-.77) or one highly associated with an appointment system. The graph in the middle displays the predicted level of legitimacy change for a court at the 95th percentile of election salience (.69) or one highly associated with elections. For the court

²⁵ The reason for this lack of an average effect of election salience will become clear later in the analysis. When an institution is associated with an appointment system, it becomes more likely for legitimacy to decrease but it also becomes more likely for legitimacy to increase. Since an association with appointment systems increases legitimacy for some and decreases it for others, the average effect for everyone is zero.

associated with an appointment system, the familiar pattern emerges that the predicted level of legitimacy change is only significantly negative at $p < .05$ for those people who both strongly disagree with the decision and perceive the institution as using a politicized decision-making process. At the 95th percentile of politicization, the predicted level of legitimacy change is significantly negative at $p < .05$ when a person either strongly or very strongly disagrees with the decision. Additionally, the marginal effect of politicization is only significantly negative at $p < .05$ when a person either strongly or very strongly disagrees with the decision. For people who very strongly disagree with the decision, at the 95th percentile of politicization legitimacy is predicted to *decrease* by 2.33 (13.7 percent of the legitimacy scale) and at the 5th percentile of politicization legitimacy is predicted to *increase* by 1.76.²⁶ For a court highly associated with elections, the predicted level of legitimacy change is never significant at $p < .05$ across all levels of politicization and across the range of issue disagreement. Additionally, the marginal effect of politicization perceptions is never significant at $p < .05$ across the complete range of issue disagreement.

²⁶ Figure 5.4 includes another unexpected finding in which the predicted level of legitimacy change is positive and significant at $p < .05$. This time legitimacy is predicted to increase at high levels of politicization when the subjects agree with a decision by a court associated with an appointment system. This finding suggests that for appointed courts the effect of politicization is to increase the positive effect of issue agreement and negative effect of issue disagreement on legitimacy change. The ability to generalize this finding though is limited because the people who agree with the decision in this study are a select group of people. These people initially disagreed with the decision and their issue attitude changed as a result of the decision. A person who is persuaded to change their issue attitude may react differently than a person who agreed with policy implications of the decision prior to the decision.

Table 5.2 – Election Salience and Legitimacy Change

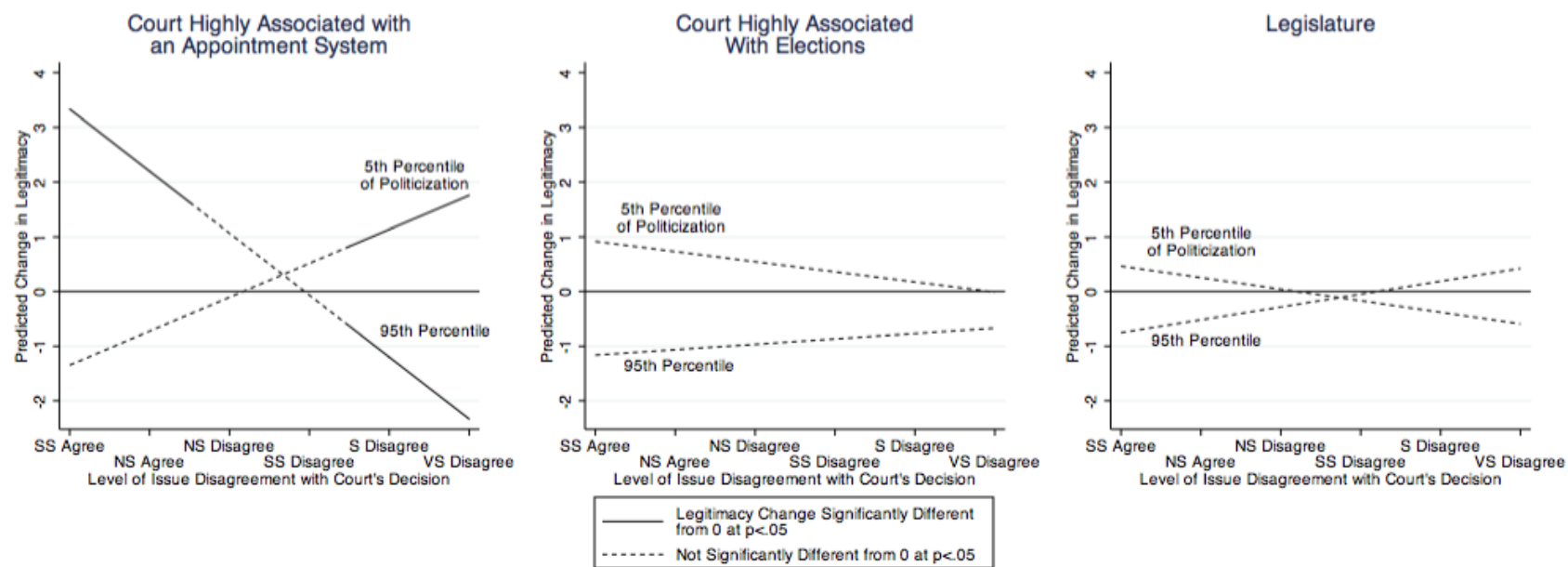
VARIABLES	Court	Court	Legislature
	Legitimacy Change	Legitimacy Change	Legitimacy Change
State Election Salience	-.04 (.37)	4.52 ^X (2.43)	
Issue Disagreement	-.68 (.62)	2.36 (1.52)	-2.27 (2.23)
Politicization Perceptions	-2.90* (.97)	3.42 (2.62)	-3.17 (3.77)
Issue Disagreement X Politicization		-6.75* (2.85)	4.70 (3.85)
Politicization X State Salience		-11.16* (4.49)	
Issue Disagreement X State Salience		-6.32* (3.38)	
Issue Disagreement X Polit. X State Sal.		14.69* (5.86)	
Individual Election Salience	.11 (.13)	1.04 (1.04)	
Politicization X Individual Salience		-1.89 (2.17)	
Issue Disagreement X Individual Salience		-1.23 (1.14)	
Issue Disagreement X Polit. X Ind. Sal.		2.46 (2.40)	
Additional Control Variables	(Included)	(Included)	(Included)
Constant	3.56* (1.58)	.95 (2.07)	-1.89 (3.17)
Observations	269	269	69
Number of groups	45	45	31

Robust standard errors in parentheses

* p<0.05, ^X p<0.1

All models are estimated using OLS and includes a random intercept that varies by state. All variables except the dependent variable, state-level election salience and individual-level election salience are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses. The models in columns 1 and 2 include only the judicial institution condition, and the model in column 3 includes only the legislature condition. The dependent variable is legitimacy change in all models. See Appendix A of chapter 5 for the complete models.

Figure 5.3 – Election Saliency and Legitimacy Change



The predicted change in legitimacy is displayed from the 5th to 95th percentile of issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. Each line represents the predicted value of legitimacy change at different percentiles of politicization perceptions. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$. The graph on the far left shows the predicted values from the model in column 2 of Table 5.2 when state election saliency is held at its 5th percentile. The graph in the middle shows the predicted values from the model in column 2 of Table 5.2 when state election saliency is held at its 95th percentile. The graph on the far right shows the predicted values for the legislature condition and the model is in column 3 of Table 5.3. The predicted values are calculated with all other variables held at their means.

These results support H1 and H2. For a court associated with an appointment system, politicization perceptions moderate the impact of a displeasing decision on an important issue. If a person perceives the court as using a politicized decision-making process, a displeasing decision causes a decrease in legitimacy. If a person perceives the court as using a principled decision-making process the decision causes an increase in legitimacy. For a court associated with elections, politicization perceptions do not affect legitimacy change, and a displeasing decision never leads to a decrease in legitimacy.

Legislature Condition

The final observational analysis examines the dynamics of legitimacy change within the legislature condition. Since a legislature is highly associated with elections, the pattern of legitimacy change should resemble that of a court associated with elections. Column 3 of Table 5.2 contains a model testing the interaction between politicization perceptions and issue disagreement within this condition (see study design section of chapter 4 for a description of the items in the legislative condition). Just as with a court associated with elections, the interaction between politicization perceptions and issue disagreement is positive but insignificant ($b=4.70$). The graph on the far right displays the predicted level of legitimacy change for the legislature condition across issue disagreement for different levels of politicization perceptions. The pattern closely matches that of a court associated with elections. In both, the level of legitimacy change is never significantly different from 0 at $p<.05$, and the marginal effect of politicization perceptions is never significant at $p<.05$.

Experimental Manipulations

The national survey included three different experimental manipulations designed to manipulate election salience. The manipulation varies by the selection method used in the state. In the experimental condition, the subjects were given a brief description of the selection method used in their state's category. In the control condition, they were given no information about the selection method used in that state. In partisan and non-partisan states, the experimental condition stated that judges were selected using competitive elections between multiple candidates. In retention election states, the experimental condition states that judges were initially appointed and then had to occasionally face retention elections. In appointment states, the experimental condition states that judges are appointed and in some states must be occasionally reappointed (See chapter 2 for more details on the manipulations). These manipulations are designed to manipulate election salience. The competitive election manipulation should increase election salience while the appointment manipulation should decrease election salience. The effect of the retention election manipulation is less clear. This system contains both appointment and election components, and the manipulation's effect depends on whether the subject interprets the system as an election or appointment system. Since the retention election manipulation could increase election salience for some and decrease it for others – depending on their interpretation – it will most likely have little overall effect.

Competitive Election Manipulation

The competitive election manipulation is designed to increase election salience. It should have the same effect as observational election salience and eliminate the negative effect of a displeasing decision on legitimacy. However, displeasing decisions already have little to no effect among a large proportion of the sample in the control condition, especially in the partisan

and non-partisan election states. The previous analyses show that in states high in election salience displeasing decisions have no effect on legitimacy change, and the partisan and non-partisan states are the ones with the highest election salience. The previous analyses also show that a displeasing decision only affects legitimacy change when the court is perceived as politicized and the issue is perceived as important. If the effect of a displeasing decision is already near zero for a large proportion of the sample, the manipulation cannot have any effect. The sample for the model testing the effect of the competitive election manipulation on legitimacy change contains only those subjects where issue disagreement has a substantial effect in the control condition. This sample is constrained to those states below the 50th percentile of state election salience (.18), those people above the 50th percentile of the politicization perception index (.5), and those people above the 50th percentile of perceived issue importance (.33).

Column 1 of Table 5.3 displays the model testing the effect of the competitive election manipulation on legitimacy change. Because of all the sample restrictions the sample size is much smaller than the previous models. To compensate for the small sample size, the model is simplified. It does not include a random intercept and only includes the manipulation and its interaction with issue disagreement. Because this model involves an experimental manipulation, the use of control variables is not essential like it would be with an analysis based solely on observational data. The model in column 1 of Table 5.3 shows that the interaction between issue disagreement and the manipulation is significant at $p < .05$. The marginal effect of issue disagreement in the control condition is negative ($b = -5.10$) and significant at $p < .05$. In the experimental condition, the marginal effect of issue disagreement is insubstantial ($b = 1.18$) and insignificant ($p = .40$). Figure 5.4 shows the substantive interpretation of these results based on the

predicted values of legitimacy change. In the control condition, the results resemble that of a court associated with an appointment system where the decision-making process is perceived as politicized. When someone either strongly or very strongly disagrees with the decision, the predicted level of legitimacy change is significantly negative at $p < .05$. In the experimental condition, this negative effect disappears, and the results resemble that of a court associated with elections. Across the complete range of issue disagreement, the predicted level of legitimacy change is never significant at $p < .05$, and the marginal effect of issue disagreement is slightly positive and insignificant. For someone who very strongly disagrees with the decision, the predicted level of legitimacy change in the control condition is -1.90 , and in the experimental condition it is $.10$. The difference between these two predicted values is significant at $p < .05$, indicating that the manipulation significantly decreased the negative effect of a displeasing decision. This replicates the effects found using observational election salience. In the control condition where election salience is relatively low, a displeasing decision causes a decrease in legitimacy. When election salience is experimentally manipulated to be higher, this negative effect disappears.

Table 5.3 – Experimental Manipulations and Legitimacy Change

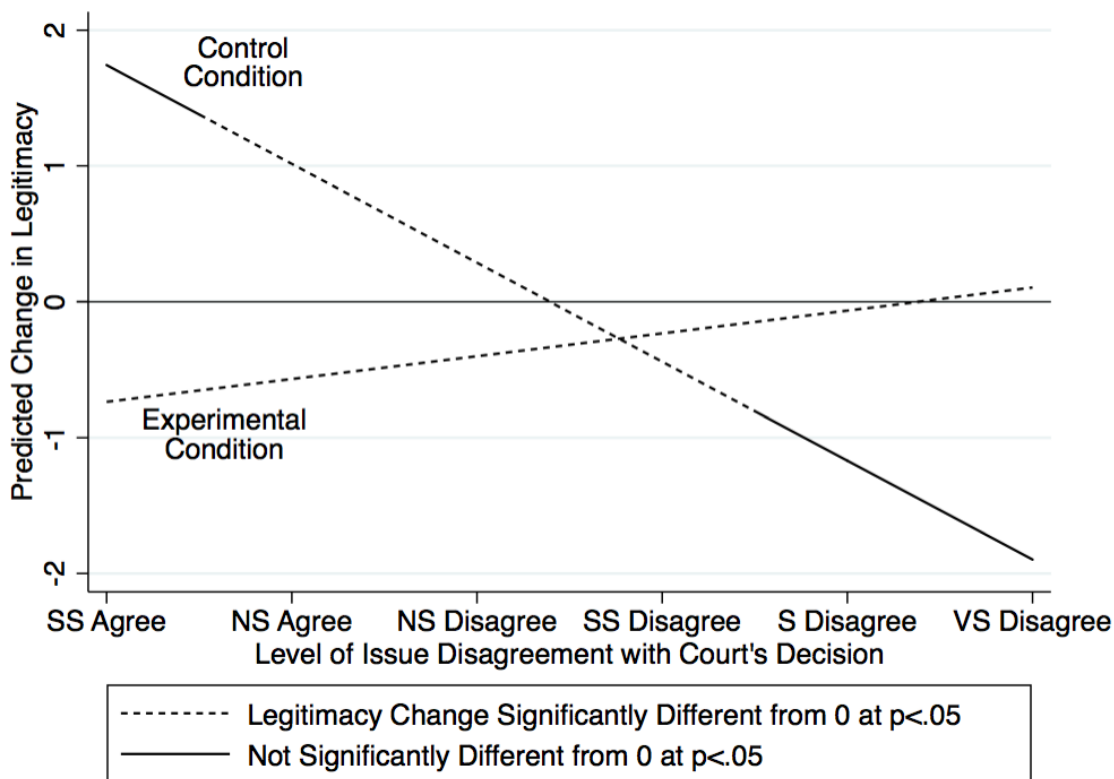
VARIABLES	Competitive Election	Retention Election	Appointment System
	Legitimacy Change	Legitimacy Change	Legitimacy Change
Issue Disagreement	-5.10*	-4.99*	-2.29
	(1.52)	(1.90)	(1.76)
Manipulation	-4.27*	-1.81	-5.12
	(1.75)	(3.64)	(6.43)
Issue Disagreement X Manipulation	6.27*	.99	7.35
	(2.06)	(3.97)	(6.96)
Constant	3.20*	5.31*	1.19
	(1.16)	(1.53)	(1.19)
Observations	42	54	53
R-squared	0.20	0.11	0.14

Robust standard errors in parentheses

* p<0.05

All models are estimated using OLS. All variables except the dependent variable are coded with 0 as the minimum and 1 as the maximum. The dependent variable is legitimacy change in all models. All analyses include only the judicial institutions condition. The manipulation variable is coded 1 for the experimental condition and 0 for the control condition. The text for the experimental condition varies by each column.

Figure 5.4 – Competitive Election Manipulation and Legitimacy Change



The predicted change in legitimacy is displayed from the 5th to 95th percentile of issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. One line represents the experimental condition, and one line represents the control condition. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$. This sample only includes the competitive election states, and the predicted values are calculated using the model in column 1 of Table 5.3

Other Manipulations

Column 2 of Table 5.2 shows the model testing the effect of the retention election manipulation. This model as well as the one in column 3 includes only those people above the 50th percentile of issue importance and above the 50th percentile of politicization perceptions. The interaction is insignificant, and the manipulation never has a significant effect ($p < .05$) across

the complete range of issue disagreement. Column 3 of Table 5.3 shows the model testing the effect of the appointment manipulation. The interaction between issue disagreement and the manipulation is insignificant, but the marginal effect of the manipulation is significantly positive ($p < .05$) whenever someone very strongly disagrees with the decision. The appointment manipulation is supposed to decrease election salience and as a result increase the negative effect of a displeasing decision when the court is perceived as using a politicized decision-making process. The appointment manipulation had the opposite effect as predicted.

Neither of these manipulations strongly affected legitimacy change. However, this is not overly problematic because the competitive election manipulation is the purest test of the theory. A retention election could be interpreted as either an appointment or election based system. The appointment manipulation also references that “other public officials of the state government” appoint the judges to the court. These other public officials will be either the governor or the legislature. Emphasizing the link between state courts and the elected branches of the government could provide an association between the state courts and elections.

Summary of Politicization Perception Results

Across both experimental and observational analyses, the results strongly confirm the hypotheses. When an institution is associated with appointment systems, politicization perceptions moderate the effect of a displeasing decision on legitimacy change. It is only when someone perceives this type of institution as using a politicized decision-making process that a displeasing decision decreases legitimacy. If an appointed institution is perceived as using a principled decision-making process, a displeasing decision never leads to a decrease in legitimacy. When an institution is associated with elections, politicization perceptions and displeasing decisions have no effect on legitimacy change. This applies to both courts associated

with elections and elected legislatures. Also, only when a decision involves an issue on which someone has a strong opinion and which he or she considers important will the decision cause a decrease in legitimacy.

Discussion and Conclusion

Each form of legitimacy has a different strength and is associated with a different type of institution. The strength of each form of legitimacy allows its associated institution to fulfill its role in the team of institutions. As shown in the previous chapter, the strength of legitimacy derived from principled decision-making is its ability to defuse political conflict. Because of this strength, appointed institutions with a high magnitude of legitimacy are able to effectively function as institutions of de-politicization. This chapter shows that the strength of legitimacy derived from elections is its high stability, and its ability to withstand the negative pressure of displeasing decisions, even when these decisions are perceived as driven by a politicized decision-making process.

Legitimacy derived from elections is associated with elected institutions of conflict. If legitimacy derived from elections could not withstand the negative pressure of displeasing decisions and political conflict, these institutions would not be able to fulfill their role. Institutions of conflict provide a venue for the public's voice to be represented. Without a legitimate institution of conflict providing representation no democratic system can be considered legitimate. For an institution of conflict and representation to remain legitimate, its legitimacy must be able to withstand the negative onslaught of the political conflict that necessarily follows when the public expresses its voice. The elected institutions are the political branches of government and will likely and perhaps inevitably be perceived as using politicized decision-making process. These institutions provide representation through elections, and

elections are inherently politicized events in which two or more opposing campaigns fight over votes. Additionally, the losing side of any policy debate has an incentive to portray the decision-making process of the other side as politicized. Only legitimacy derived from elections is able to withstand all of these politicizing forces, and it is because of this strength that institutions of conflict can remain a legitimate institution while still representing the many conflicting viewpoints of the mass public.

Legitimacy derived from principled decision-making is less able to withstand these negative pressures of displeasing decisions and politicization, but this is not necessarily a critical weakness. The appointed institutions associated with this type of legitimacy have a better chance of separating (or at least being perceived as separating) themselves from the political conflict endemic to the elected institutions. The attempt to maintain this separation is seen during every confirmation hearing for federal judges when they continually repeat that their only job is to interpret the law. When these institutions fail to maintain the perception of this separation, the public will begin to see them as using a politicized decision-making process, and the legitimacy of the institution will no longer be resistant to the negative influence of displeasing decisions. These results have important implications for the ability of the appointed judiciary to maintain its independence. The discussion of this will be delayed until the next chapter that concentrates solely on the legitimacy of the U.S. Supreme Court.

Chapter 6 – The Two Modes of Evaluating Appointed Institutions: A Test Using the U.S. Supreme Court

The previous chapters examined the differences between three properties of legitimacy for institutions associated with elections and those associated with appointment systems. This chapter will take a more in-depth look at the legitimacy for the most prominent appointed institution in America – the United States Supreme Court. Unlike with state supreme courts about which people have very little knowledge, the association of the U.S. Supreme Court with an appointment system should be strong for everyone, especially for the sample of political science undergraduates used in this experimental study. Using this type of institution allows a closer look at the dynamics of the legitimacy for appointed institutions. Just as the three properties of legitimacy can vary between different types of institutions, each property can vary by individual for the same institution. In this chapter, I present a study that experimentally manipulates perceptions of the Court's decision-making process and examines the effect of the manipulation on each of the three properties of legitimacy.

Perceptions of Decision-Making Process and the U.S. Supreme Court's Legitimacy

Many existing studies have examined the relationship between perceptions of the Court's decision-making process and the magnitude of legitimacy. They show that the more the public perceives the Court as using a legalistic (Casey 1974; Scheb et al. 2000), fair (Tyler et al. 1991; Ramirez 2008) or principled decision-making process (Gibson et al. 2011) the more the public attributes legitimacy to the Court. For many if not most scholars perceptions of decision-making

process are seen as the key difference between the Court and two political branches of government and one of the key reasons the judiciary enjoys more support from the mass public than the other branches (Dahl 1957; Easton 1964; Casey 1974; Hibbing and Theiss-Morse 2002; Gibson et al. 2005).

The effect of perceptions of decision-making perceptions on the effectiveness and stability of legitimacy have received little to no attention. One reason for this is the manner in which research on acceptance judgments and the resistance of legitimacy to displeasing decisions is approached. For example, Positivity Theory from Gibson and Caldeira (2009; Gibson 2007) states that displeasing decisions and perceived policy divergence do not, at least in the short-term, decrease the Supreme Court's legitimacy. Bartels et al. (2013) counters this with evidence showing that subjective policy divergence strongly affects legitimacy. Their views and empirical evidence may be in opposition to each other, but a commonality across both is that they ask the question of whether perceived policy divergence has an unconditional and constant effect on legitimacy. However, in reality perceived policy divergence and displeasing decisions affect legitimacy in some circumstances and does not in others. Rather than arguing over *whether* policy divergence affects legitimacy the argument should be *when* policy divergence affects legitimacy.

A similar dynamic applies to the question of whether legitimacy affects the public's acceptance of Court decisions. Normally, this question is posed as whether legitimacy causes people to accept Court decisions and if so to what extent (Gibson et al. 2005; Gibson 1989; Clawson et al. 2001; Mondak 1994). Even though most studies find that legitimacy strongly affects acceptance, as with the previous question legitimacy may not always affect acceptance.

Instead it will affect acceptance under some circumstances and under other circumstances something else drives acceptance judgments.

In this study, I propose and test the hypotheses that perceptions of *how* the Court makes decisions are a key determinant of *when* legitimacy affects acceptance judgments and *when* policy divergence leads to a reduction in legitimacy. Using an experimental design, I show that it is only when the Court is perceived as using a principled and de-politicized decision-making process that legitimacy affects whether people accept Court decisions and that legitimacy can resist the negative influence of displeasing decisions. These results emphasize the importance of decision-making perceptions in protecting the independence of the Court. Because it lacks a direct enforcement mechanism, a substantial and stable source of legitimacy is its best method to ensure compliance with its decisions (Gibson, Caldeira and Spence 2005; Mondak 1992; Caldeira 1986; Murphy and Tanenhaus 1968; Easton 1965). Without legitimacy encouraging compliance it would lose its ability to act independently and have to either follow the wishes of the other institutions of government (Clark 2011; Whittington 2007; Rosenberg 1991; Murphy 1964) or the whims of mass public opinion (Marshall 1989; Adamany 1973). Judicial independence also relies upon a legitimacy that is stable across time and resists the negative influence of displeasing decisions. If the Court's legitimacy decreases every time the Court makes an unpopular decision, the only way for the Court to maintain its legitimacy is by following the wishes of the mass public. Whenever the Court is perceived as using an unprincipled and politicized decision-making process, its legitimacy fails to meet either of these requirements.

Types of Decision-Making Perceptions

Scholars have taken a variety of approaches to studying perceptions of the Court's decision-making process. The classic literature posits that the Court's legitimacy requires the public's acceptance of the myth of legality in which decisions are based solely on legal principles (Casey 1974; Jaros and Roper 1980; Scheb et al. 2000). Other scholars have proposed slightly different variations. Tyler (2006; Tyler and Rasinski 1991) argues that perceptions of procedural fairness substantially influence legitimacy perceptions. In a recent re-conceptualization of judicial decision-making perceptions, Gibson et al. (2011) argue for the importance of a two factor judicial decision-making typology. The first factor is whether judges exercise discretion or not, which is akin to acceptance or rejection of the myth of legality. The second identifies whether this discretion is exercised in a politicized or principled fashion. They emphasize that these principles do not necessarily need to be legalistic principles. The key is that judges do not make decisions in a self-interested way like ordinary politicians.

As I have throughout this dissertation, I concentrate on this second factor of principled to politicized decision-making. At one end of this decision-making spectrum are people who perceive the Court as using principled decision-making that encompasses but is not exclusively legalistic principles. At the other end are people who perceive the Court as using a politicized decision-making process in which justices act in a self-interested way like ordinary politicians. Self-interested behavior can have multiple meanings in the context of judicial behavior. It could mean favoring certain business interests or making decisions to benefit their favored political party. Another possibility is behavior that is only concerned with ensuring the victory of their preferred policy outcome. This type of self-interested behavior puts the policy implications of a

decision above the principles guiding that decision. Judges all have policy preferences, and they gain some personal benefit from seeing those policy preferences become reality.

Two Modes of Evaluating the Court

The way in which individuals evaluate the Court can be placed on a similar spectrum that ranges from principled to politicized. At the principled end of this spectrum, people evaluate the Court based on abstract principles such as whether it has the moral and legal authority to make certain decisions. At the politicized end of the spectrum, people evaluate the Court based on whether the Court's decisions agree with their personal policy stances. These two ends of the spectrum represent two distinct modes of evaluation that inform both the question of when legitimacy affects acceptance and when displeasing decisions decrease legitimacy.

If people are using the principled mode, the abstract principle of whether the Court has a legal or moral authority to make a decision or, in other words, whether the Court has the legitimacy to make a decision will drive acceptance judgments. Legitimacy in this mode of evaluating the Court is based on abstract principles and stable values such as support for the norms of democracy or the rule of law (Caldeira et al. 1992). These abstract principles have nothing to do with policy disagreement, and as a result when people encounter policy disagreement, the legitimacy they attribute to the Court will not decrease. When people use the politicized mode, instead of legitimacy it is now policy agreement that determines whether someone accepts a Court decision. Legitimacy perceptions themselves are also dependent upon satisfaction with the policy output of the Court. As a result, whenever people encounter a displeasing decision legitimacy decreases.

A person's perception of how the Court makes its decisions determines which of these two modes he or she uses to evaluate the Court. In essence, a person's own decision-making

process mirrors their perception of the Court's decision-making process. When the Court is perceived as making decisions based on abstract principles, the mass public evaluates the Court on similar types of abstract principles. However, when the Court is perceived as making decisions in a politicized manner, people evaluate the Court using the politicized mode. In this mode, the public perceives the justices' main goal to be ensuring their own preferred policy outcome becomes reality. If the justices make decisions based on their preferred policy outcomes, an ordinary citizen will also evaluate the Court based on his or her own preferred policy outcomes.

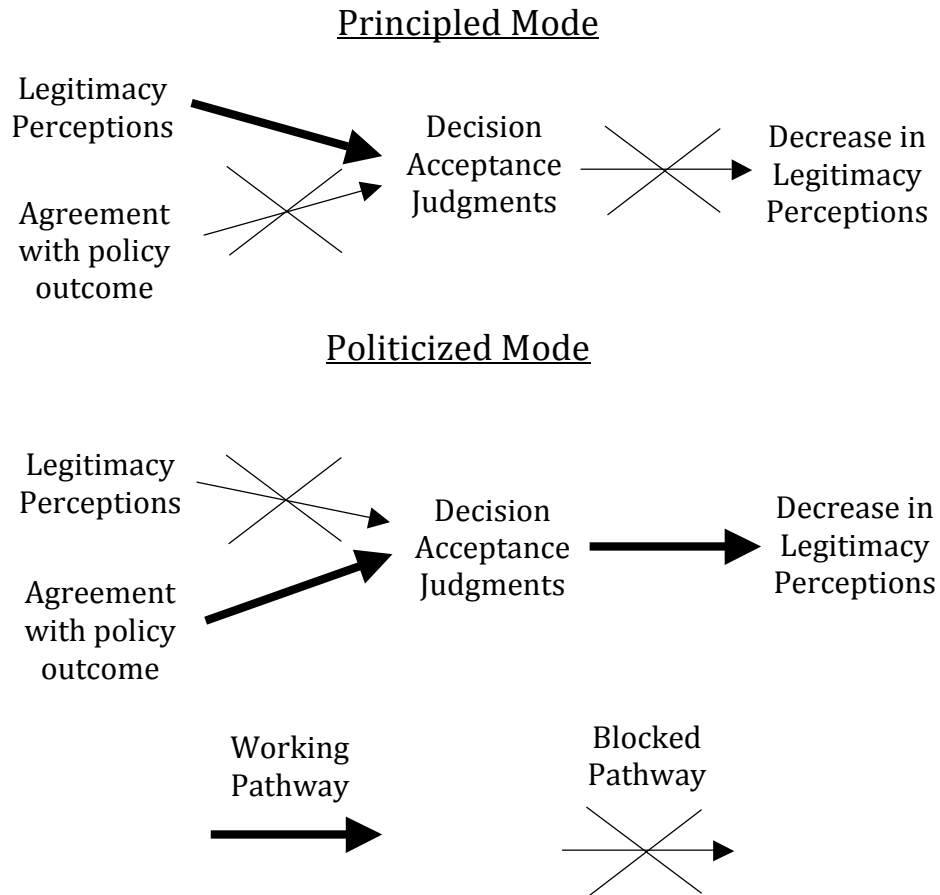
Figure 6.1 summarizes the differences between the two modes of evaluating the Court. In the principled mode, legitimacy perceptions determine acceptance judgments, and a person's evaluation of the decision does not affect whether legitimacy decreases. In the politicized mode, agreement with the policy outcome of a decision determines acceptance judgments. If someone does not accept a decision that indicates it is a displeasing decision. In this mode, that displeasing decision now leads to a reduction in legitimacy.

This leads to two hypotheses concerning acceptance judgments and the stability of legitimacy perceptions.

H1: When the Court is perceived as using a principled decision-making process, legitimacy perceptions will be the predominate influence on acceptance judgments. When the Court is perceived as using a politicized decision-making process, agreement with the policy outcome of a decision will be the predominate influence on acceptance judgments.

H2: When the Court is perceived as a using principled decision-making process, displeasing decisions do *not* decrease legitimacy perceptions. When the Court is perceived as using a politicized decision-making process, displeasing decisions decrease legitimacy perceptions.

Figure 6.1 – The Two Modes of Evaluating the U.S. Supreme Court



A Note on Positivity Theory and The Two Modes

The previous chapter concerning the stability of legitimacy also proposed that a displeasing decision only decreases legitimacy when the institution is perceived as using a politicized decision-making process, but it justified that prediction using the shirking mechanism from Positivity Theory not the two modes of evaluation theory (Gibson et al. 2003b, 2009). In terms of the conditions under which the displeasing decision causes a decrease in legitimacy, both the two modes of evaluation and Positivity Theory lead to the same prediction. It only occurs when the institution is perceived as using a politicized decision-making process. The

difference between the two theories is their predictions for when a pleasing decision leads to an increase in legitimacy. For Positivity Theory, a pleasing decision leads to an increase in legitimacy when the Court is perceived as using a principled decision-making process. For the two modes of evaluation, a pleasing decision leads to an increase when the Court is perceived as using a politicized decision-making process. The evidence presented in chapter 4 showed that legitimacy for an institution associated with an appointment system increased when a person agreed with the decision and perceived the institution as using a politicized decision-making theory. This provides support for the two modes of evaluation theory. However, legitimacy also increased when the institution associated with an appointment system was perceived as principled and the person strongly disagreed with the decision. This cannot be explained by the two modes of evaluating the Court, but as outlined in Chapter 4, it can be explained using Positivity Theory.

Perhaps, what is occurring is that both the two modes of evaluation theory and a slightly modified Positivity Theory are correct. When the court is perceived as principled, all decisions (not just pleasing ones) lead to an increase in legitimacy. When the court is perceived as politicized, legitimacy is more volatile and increases or decreases based on a person's satisfaction with the institution's policy decisions. In effect, the legitimacy of a politicized court acts like specific support. This explanation that combines the two theories explains all the results from chapter 4 and the results presented below. As noted in the last chapter, the question of when legitimacy increases is an interesting question, but will not be emphasized in this analysis. The emphasis here is on the link between displeasing decisions and decreases in legitimacy. Since both theories make the same predictions concerning when a displeasing decision decreases legitimacy, either could be used in this chapter to explain the stability of legitimacy. The benefit

of using the two modes of evaluation theory is that it explains both the effectiveness and stability of legitimacy using one theory, which is something Positivity Theory cannot do.

The Magnitude of Legitimacy

The two modes of evaluation theory provide predictions for the effectiveness and stability of legitimacy, but it does not provide any predictions for the effect of decision-making perceptions on the magnitude of legitimacy. A large literature states that negatively evaluated decision-making perceptions decrease the magnitude of legitimacy for the U.S. Supreme Court (Casey 1974; Scheb et al. 2000; Tyler et al. 1991; Gibson et al. 2011). This existing research leads to H3.

H3: As the perception that the Court uses a politicized decision-making increases, the magnitude of legitimacy will decrease.

Study Design

To examine these hypotheses, I use an experimental design that manipulates the subjects' perceptions of the Court's decision-making process. The study begins with general political questions like ideological self-placement. Next, the experimental manipulation is administered. Following this, I measure the subjects' legitimacy and decision-making perceptions, present them with three decisions from the Court and measure their acceptance of these decisions. Finally, I re-administer the scale measuring legitimacy perceptions. More in-depth details of the study are below.

The experimental manipulation was designed to increase perceptions that the Court uses a politicized decision-making process. In the experimental condition, the subjects read a news article discussing the possibly improper activities of the Supreme Court justices in the lead up to the Court's decision in the highly salient health care case *National Federation of Independent*

Business et al. v Sebelius. In the control condition, the subjects read a news article summarizing the benefits and problems with high-fructose corn syrup. The experimental condition included attacks on the Supreme Court Justices by public officials from both sides of the political spectrum published in mainstream media sources. The article includes critiques of Clarence Thomas for the political activities of his wife Ginni Thomas. She was involved in the Tea Party movement and was accused of writing an editorial against the health care legislation. Clarence Thomas is quoted as saying he “believes in the same thing” as his wife. It also includes critiques of Elena Kagan for not recusing herself since she was part of the Obama administration when the legislation was passed. The article ends with a paragraph describing how these are part of a larger pattern of activities revealing how the Court has become increasingly politicized and unprincipled. The text of the articles and the exact wording for every item is included in Chapter 6 Appendix A.

This type of manipulation offers multiple advantages. First, it includes information drawn from the actual media coverage of the lead-up to the health care decision. The experimental condition may not be typical of how the media covers the Supreme Court (Spill and Oxley 2003), but it is one aspect of the media’s presentation of the Court. The experimental test presented here offers insight into how an increase in this type media framing affects the public. Second, using a highly salient case like *NFIB v Sebelius* provides a more powerful manipulation than a fabricated or less salient case. Most of the subjects will have already heard of the health care case prior to the study, and probably have a rather strong opinion on the issue. When they see a justice who will almost assuredly vote against their issue position taking part in possibly improper activities, this will have a dramatic effect on their perception of the Court. The direction of these strong prior attitudes should not change the effect of the manipulation.

Information critical of both liberals and conservatives is included in the article, and thus both sides of the political spectrum should be influenced by the manipulation.²⁷

The second portion of the study measures decision-making and legitimacy perceptions. Most of the items are virtually identical to the ones used in the state institution study from the previous chapters.²⁸ The legitimacy items come from a previously validated measure used in the work of Gibson, Caldeira and Spence (2003a) that assesses whether people want to make fundamental changes in the institution.²⁹ The decision-making perception items were designed to tap into the spectrum that ranges from principled to politicized decision-making. More discussion of these items will be delayed until the data analysis section.

In the third portion of the study, the subject read about three different Supreme Court cases: *Florence v Board of Chosen Freeholders*, *Fisher v University of Texas*, and *United States v Alvarez*. *Florence* involves whether jails can strip search all inmates entering a jail without reasonable suspicion. *Fisher* involves a university's affirmative action program. *Alvarez* involves

²⁷ One potential concern with using the health care case in the manipulation is that it was already highly politicized in the news media. Because of this, the experimental manipulation may change the subject's decision-making perceptions not from highlighting individual justice's unprincipled behavior but from the mention of a previously politicized Court case. Even if this were the case, it would not change the interpretation of my findings. In both cases, the impact of the manipulation is to change the subject's decision-making perceptions. Any impact of the manipulation can still be attributed to a change in perceptions of politicized decision-making. If I was most concerned with what influenced perceptions of decision-making determining which caused the change in decision-making perceptions would be important, but that is beyond the scope of this paper. I am interested in what impact a change in decision-making perceptions has on the mode of evaluating the Court.

²⁸ Most of the legitimacy and politicization items are the same ones used in the state institution study from the previous chapters. For legitimacy, 3 of the 4 are virtually identical. The one additional item is judicial institution specific and could not be used in the state institution study. For politicization, all 3 items used in the state institution study are included in this study with some slight wording differences, and 2 additional judicial-institution specific items are added.

²⁹ The four legitimacy items ask whether someone strongly agrees, agrees, neither agrees nor disagrees, disagrees or strongly disagrees with the following four items: "If the Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether."; "The right of the Supreme Court to decide certain types of controversial issues should be reduced."; "The Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court's decision."; "The Supreme Court ought to be made less independent."

the free speech aspects of a law that makes it a crime to lie about being awarded a military decoration or medal. The cases had all been appealed to the Court but had yet to be decided when the study was carried out. For each case, the subjects read a fabricated news article summarizing a decision attributed to the U.S. Supreme Court. The direction of the decision is randomly determined with each subject reading either three liberal or three conservative decisions. The articles begin by briefly summarizing the decision and giving some background information about the case. It ends by presenting a legal argument supporting each side of the case.

The order of the articles was randomly determined, and following each article the subjects are presented with three items assessing their acceptance of the decision. The first asks whether the person thought this decision should be accepted and obeyed by the mass public; the second whether it should be implemented as public policy by government officials; the third whether the subject supported or opposed overturning the decision. Following each item is a four-level follow-up item assessing opinion strength that ranges from extremely to not at all strongly. The Cronbach's alpha for an additive scale of all the acceptance items is .72. In the final part of the survey, the legitimacy items are re-administered. The subjects then fill out a demographic questionnaire and are debriefed before leaving the laboratory.

The sample for the experiment is composed of undergraduates in political science classes at a public northeastern university. They were offered extra credit for their participation. 245 people completed the experiment. Of these, 55 are excluded because they were not United States citizens. The study was run during the fall semester of 2011 after cert was granted in the health care case but before oral arguments. Chapter 6 Appendix B contains demographic information about the sample and the univariate frequencies for each item.

Data Analysis

Before moving on to the main hypotheses, I must determine whether the manipulation had the intended effect of causing people in the experimental condition to perceive the Court as less principled and more politicized. This can be accomplished using the four items assessing decision-making perceptions included after the manipulation but before the announcement of the Court decisions. The items ask whether the subjects strongly agree, agree, neither agree nor disagree, disagree or strongly disagree with a series of statements. Two items tap into the general idea of a politicized Supreme Court: “U.S. Supreme Court justices are really just politicians in robes” and “The personal political opinions of Supreme Court justices have too much influence on how they make decisions.” Another is meant to tap into the idea of the justices using principled decision-making that is not necessarily based on legalistic principles: “The members of the U.S. Supreme Court usually follow a firm set of principles when making decisions.” The final item assesses whether people believe the justices use specifically legalistic principles when making decisions: “Supreme Court justices base their decisions on the law, not their personal political opinions.”

The correlation for each of these items and the decision-making manipulation is included in Table 1. The correlation between the two politicization items is positive and significant at $p < .05$, indicating that the manipulation did increase the perception of a politicized Court. The correlation between the general principled decision-making item and the manipulation is negative and significant at $p < .05$. In addition, the correlation between the legalistic decision-making item and the manipulation is negative and significant at $p < .05$. Table 1 also includes the correlation between an additive index of the four items and the manipulation. This is coded so that higher numbers indicate perceptions of a more politicized and less principled decision-

making process. The correlation is positive ($r=.26$) and significant ($p<.05$). These results indicate that the manipulation had the effect of making the Court appear as using more politicized and less principled decision-making process.

Table 6.1 – Decision-making Perceptions and the Magnitude of Legitimacy

Decision-Making Perceptions	Correlation with decision-making manipulation
Judges are politicians in robes	.15*
Political opinions have too much influence	.25*
Follow firm set of principles	-.17*
Decisions based on law	-.18*
Politicized Decision-Making Index	.26*
Legitimacy Perceptions	
Do away with Court	.01
Right to decide issues reduced	-.12
Say what Constitutions means	.05
Made less independent	-.03
Legitimacy Index	-.04

* $p<.05$, $N=190$

The individual decision-making perception items are coded so that higher numbers indicate more agreement with the statement. The decision-making index is an additive scale of the four decision-making items. It is coded so that higher numbers indicate more politicized and less principled decision-making perceptions. The legitimacy items are coded so that higher numbers indicate a higher magnitude of legitimacy.

Magnitude of Legitimacy

Table 1 also includes the correlation between the manipulation and legitimacy items administered prior to the Court decisions. This correlation represents the effect of the politicization manipulation on magnitude of legitimacy. Across all four items the correlation is insignificant with $p > .05$. The correlation with an additive index of the four items is included and is also insignificant. This lack of an effect contradicts much of the previous literature on the link between decision-making and legitimacy perceptions. Across multiple types of decision-making perceptions the cross-sectional relationship between decision-making and legitimacy perceptions is robust and strong (Tyler et al. 1991; Scheb et al. 2000; Gibson et al. 2011). If this relationship results from a direct relationship whereby any change in decision-making perceptions lead to a change in the magnitude of legitimacy, a manipulation that affects decision-making perceptions should also affect legitimacy perceptions. The results from this experiment do not match that pattern.

This is not the first experiment to find that manipulating decision-making perceptions did not affect legitimacy perceptions. Mondak (1993) manipulated procedural fairness – admittedly a different type of decision-making perception than the one dealt with here – and found no effect on legitimacy perceptions. While no sweeping conclusion can be made from these null results, it does suggest that the cross-sectional relationship between decision-making and legitimacy perceptions may result from a more complicated model than one whereby any change in decision-making perceptions leads to a change in magnitude of legitimacy. Perhaps, instead decision-making perceptions affect legitimacy perceptions by changing the mode of evaluation used to assess the Court.

Determinants of Acceptance Judgments

Next, I examine the effect of the manipulation on the determinants of the subjects' acceptance judgments. In the politicized condition, acceptance judgments should be predominately driven by policy agreement with the decision, and in the control condition, acceptance judgments should be predominately driven by legitimacy perceptions. During the study, the subjects answered three acceptance items after reading about each of the three Court decisions. The dependent variable for this analysis is an additive scale of the nine acceptance items (three from each case). It is then rescaled with 0 as the theoretical minimum and 1 as the theoretical maximum. The three most important independent variables are the legitimacy index scaled from 0 to 1, a dichotomous indicator for the decision-making manipulation (1 = politicized condition, 0 = control condition) and a variable designed to assess agreement with the policy implications of the Court decisions.

The policy agreement variable takes advantage of the second experimental manipulation in which the three Court decisions were randomly assigned to be either all liberal or all conservative decisions. This manipulation is combined with a five-level ideological self-placement item to create a five-level ideological agreement variable that ranges from strong agreement (e.g. strong conservative receiving conservative decisions) to strong disagreement (e.g. strong liberal receiving conservative decisions). The ideological self-placement item was asked prior to the manipulation. If people are making acceptance judgments based on policy agreement, the ideological agreement variable should affect acceptance since a conservative will be more likely than a liberal to agree with a conservative decision. Because the manipulation is expected to change the determinants of acceptance, I interact the legitimacy index and ideological agreement with the politicization manipulation. I also include support for the rule of

law and knowledge of the Court as control variables. All variables are recoded from 0 as the minimum to 1 as the maximum. Table 2 displays this model.

I first examine the two interaction coefficients in the model. Since the politicization manipulation is expected to switch people from using legitimacy as the main determinant of acceptance to policy agreement, the interaction coefficient should be positive for legitimacy and negative for ideological agreement. The interaction coefficient on legitimacy matches expectations and is significant at $p < .05$. The interaction coefficient on ideological agreement is in the right direction but is not statistically significant.

Table 6.2 – Decision-Making Perceptions and the Effectiveness of Legitimacy

	(1) Acceptance
Legitimacy Perceptions	.30* (.11)
Decision-Making Manipulation	.16 (.11)
Legitimacy X Manipulation	-.36* (.15)
Ideological Agreement	.09 (.07)
Ideological Agreement X Manipulation	.11 (.10)
Support for Rule of Law	.12* (.06)
Knowledge of Court	.09* (.04)
Constant	.28* (.07)
R ²	.16
Observations	190

Standard errors in parentheses

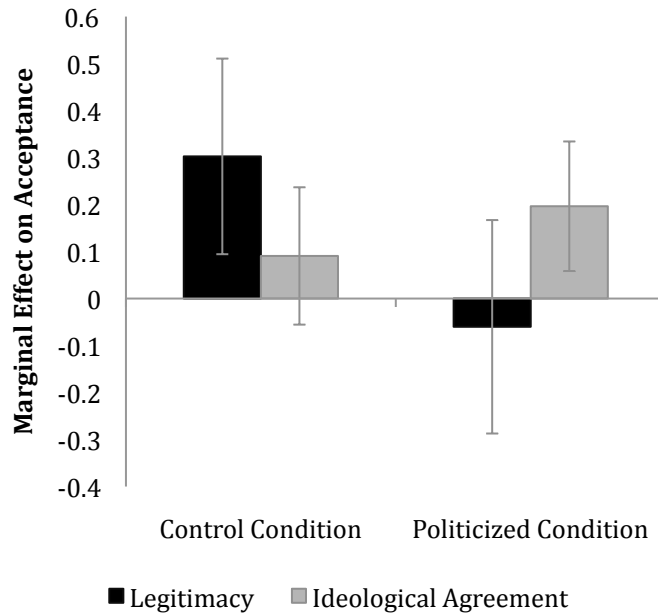
* $p < 0.05$

The decision-making manipulation is coded with 0 as the control condition and 1 as the unprincipled condition. All variables are recoded from 0 to 1. The model uses OLS regression.

While the interaction coefficients themselves only provide strong support for the legitimacy interaction, examining the marginal effects for legitimacy and ideological agreement across the two conditions provides evidence that acceptance judgments are predominately driven by legitimacy in the control condition and by policy agreement in the politicized condition. Figure 2 displays the marginal effects for each variable within each condition with 95 percent confidence intervals. These marginal effects are calculated by taking ideological agreement and legitimacy from 0 to 1. In the control condition, legitimacy has a positive and statistically significant effect ($p < .05$) on acceptance while ideological agreement is insignificant. The two marginal effects are also substantively different. The marginal effect of legitimacy is three times larger ($b = .30$) than the marginal effect of ideological agreement ($b = .09$). In the politicized condition, the pattern reverses. The marginal effect of legitimacy is insignificant and actually slightly negative. The marginal effect of ideological agreement on the other hand is positive and statistically significant at $p < .05$. In this condition, legitimacy has no effect on acceptance while the marginal effect of ideological agreement is $.20$.

Figure 2 supports the hypothesis that in the control condition legitimacy is driving acceptance judgments while in the politicized condition ideological agreement is driving acceptance judgments. Even if the manipulation did not significantly increase the marginal effect of ideological agreement on acceptance, by reducing the marginal effect of legitimacy to zero the manipulation caused policy agreement to become the major determinant of acceptance behavior in the politicized condition. Thus, the evidence shows that people are using a principled mode of evaluating the Court in the control condition while they are using the politicized mode in the politicized condition.

Figure 6.2 - Determinants of Acceptance



The data for this figure comes from column 1 of Table 2. All variables are recoded from 0 to 1. The marginal effects are calculated by taking the variables from 0 to 1.

This analysis showed that the politicization manipulation changed the determinants of acceptance judgments, but it did not test the direct effect of the manipulation on acceptance. The evidence suggests that decision-making perceptions do not directly affect acceptance because the correlation between the manipulation and acceptance is $r=.00$. Based on the existing literature, the lack of a direct effect on acceptance is not surprising. While I know of no study that has explicitly examined the effect of principled v politicized decision-making perceptions on acceptance, multiple studies (Gibson 1989, 1991; Gibson et al. 1995, 2005; Tyler et al. 1991) have looked at the direct effect of procedural fairness perceptions on the acceptance of judicial decisions. In all of them procedural fairness had little effect on acceptance whenever legitimacy

is included in the model. Overall, the evidence suggests that decision-making perceptions do not have a direct effect on acceptance but instead change the determinants of acceptance.

Legitimacy Change and Displeasing Decisions

In this section, I examine the conditions under which a displeasing decision decreases legitimacy. The specific hypothesis is that a displeasing decision should decrease legitimacy in the politicized condition but have little effect on legitimacy in the control condition. The first task is to create a measure of legitimacy change. Legitimacy perceptions were measured after the manipulation but before the presentation of the Court decisions and then directly after the subjects read all three Court decisions. The same four items were presented each time, and I create an additive index of legitimacy for each wave. The measure of legitimacy change is coded into a three level variable.³⁰ Anyone who shifted by one point or less from the pre-decision to post-decision legitimacy index is coded as 0 to indicate no change. Those who decreased by more than one are coded as -1, and those who increased by more than one are coded as 1.

³⁰ Another possible coding of the legitimacy change variable is to subtract the pre-decision legitimacy index from the post-decision legitimacy index. However, OLS regression cannot be used with this variable because the model fails post-estimation checks for influential and outlying data. One data point has an undue amount of influence on the results. For this data point, the DF_{beta} , a measure of how much influence that data point has on a specific coefficient, for the interaction coefficient is .66. This is twice as large as any other data point and four times as large as the suggested cutoff of $2/\sqrt{N}$. On Cooks distance, a measure that combines the influence of that data point on the whole model and the degree to which it is an outlier, the same data point is again twice as high as any other, and this time more than 10 times the size of the suggested cutoff of $4/N$. One method of dealing with influential data is to use bi-weight regression, which uses an iterative process to down-weight influential data. When using this type of regression, the results for the legitimacy model replicate exactly as with the three level change variable, and the critical interaction coefficient is negative and statistically significant at $p < .05$. When using traditional OLS, the interaction coefficient is again negative but only has a p statistic of .12. Post-estimation checks reveal that the most influential data points are those that have extreme values on the legitimacy change index. The two most influential data points are the lowest two on this index. Rather than down-weighting these influential data points, another approach is to recode the variable so that extreme outliers no longer have an undue amount of influence on the model. Coding the legitimacy change variable into an ordinal three-level variable accomplishes that.

Additionally I need a measure of whether the subjects are displeased with the decision. The only direct measure of their evaluation of the Court decisions is the acceptance measures.³¹ The acceptance measure used in this section though must differ from the one used in the previous section. The current concern is whether negative feelings toward Court decisions leads to a decrease in legitimacy. The additive index used for the previous analysis ranges from extremely positive to indifference to extremely negative. For the measure used in this analysis, it must tap only into the level of negativity and not be contaminated by variation in positivity. The conditions under which a pleasing decision leads to an increase in legitimacy may be different than the conditions under which a displeasing decision leads to a decrease in legitimacy. The chosen measure of negativity counts the number of items, across all three decisions, in which the subject indicates a desire to challenge the decision. Since legitimacy should only decrease when people are both displeased with the decision and in the politicized condition, I interact the count of negative acceptance responses with the manipulation in a model of legitimacy change. I also include support for the rule of law and knowledge of the Court as control variables. Since the dependent variable is an ordinal variable, I use an ordered probit link.

Table 3 displays the results from this model. The interaction between the count of negative acceptance responses and the manipulation is negative and significant at $p < .05$. This indicates that a displeasing decision has a greater negative effect on legitimacy in the politicized condition than in the control condition.

³¹ This study did not include the same type of policy preference measure used in the state institution study from the previous chapters. Also, the ideological agreement measure used in the previous analysis acts as a proxy for the subject's feelings toward the Court decisions but is not a direct measure. A direct measure of someone's evaluation should be more accurate than a proxy. In a model exactly like one shown in Table 3 with ideological agreement and its interaction with the manipulation included, neither coefficient reaches statistical significance. The marginal effect of ideological agreement is also insignificant in both conditions. Additionally, including the variables does not change the statistical significance or magnitude of the negative acceptance count coefficient or its interaction with the manipulation.

Figure 3 provides another way of exploring the dynamics involved in this model. It displays the marginal effect of the manipulation on the probability of legitimacy decreasing along with 95 percent confidence intervals. It shows that at low levels of negative acceptance or when people are pleased with the Court's decisions, the manipulation has no effect on the probability of legitimacy decreasing. It is only for those people who answer negatively to three or more of the acceptance items that the manipulation causes a statistically significant ($p < .05$) decrease in legitimacy. At this point on the scale, the predicted probability that a person's legitimacy will decrease is 10 percent higher in the politicized condition than in the control condition. 45 percent of the sample is at this point or higher on the count of negative acceptance responses. At the higher end of the scale, the effects of the manipulation become quite large. At the 95th percentile of the scale – or when someone responds negatively to six of the acceptance items – the predicted probability that a person's legitimacy attitude decreases is 31 percent higher in the politicized condition than in the control condition. This pattern of results shows that the manipulation does not directly cause a decrease in legitimacy. Instead it works by amplifying the negative effect of a displeasing decision. Without a displeasing decision, the politicization manipulation has no effect on legitimacy change.

Table 6.3 – Decision-Making Perceptions and the Stability of Legitimacy

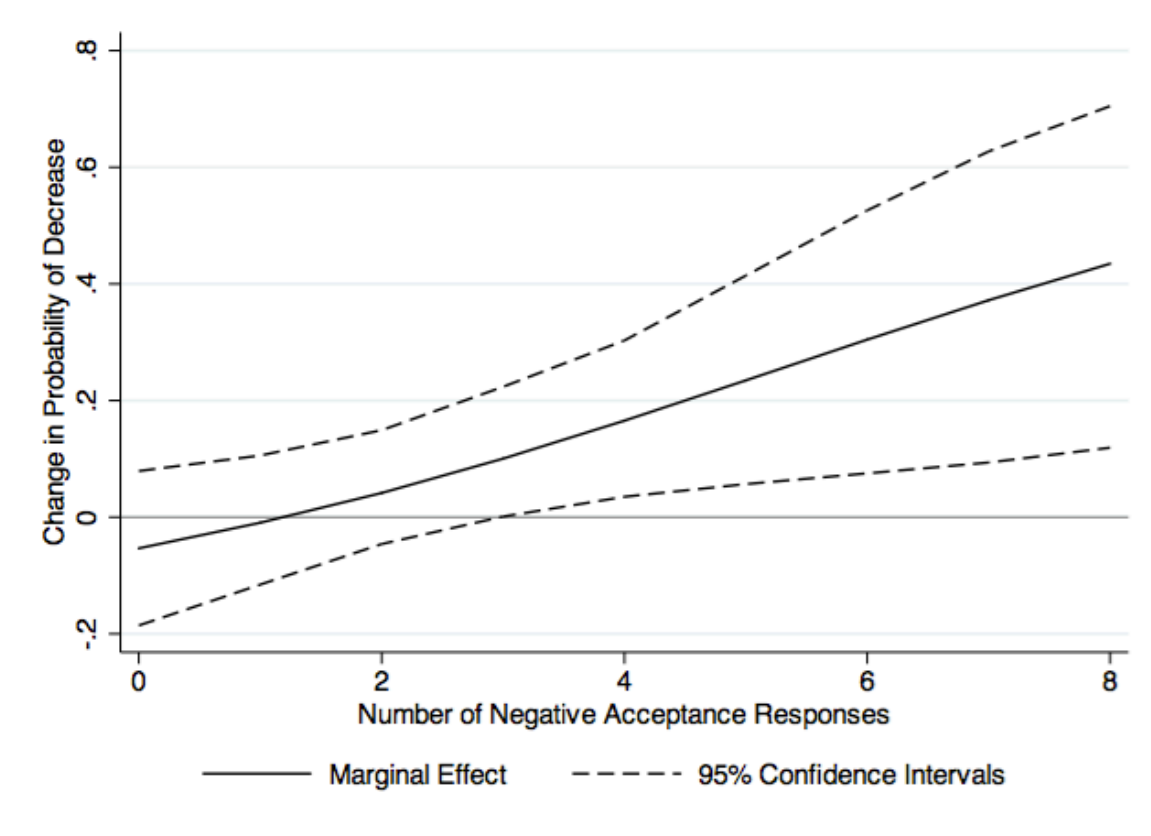
	Change in Legitimacy
Count of Negative Acceptance Responses	-.01 (.06)
Decision-Making Manipulation	.41 (.51)
Negative Acceptance X Manipulation	-.20* (.09)
Ideological Agreement	-.25 (.57)
Ideological Agreement X Manipulation	-.33 (.80)
Support for Rule of Law	.04 (.46)
Knowledge of the Court	-.05 (.31)
Cut 1	-1.06 (.44)
Cut 2	.46 (.44)
Observations	190

Standard errors in parentheses

*p < 0.05

The decision-making manipulation is coded with 0 as the control condition and 1 as the unprincipled condition. The change in legitimacy variable is coded -1 for those whose legitimacy decreased by at more than one point, 1 for those who increased by more than 1 point, and 0 for all others. The count of negative acceptance responses ranges from 0 to 8. All other variables are recoded from 0 to 1. The model uses an ordered probit link function.

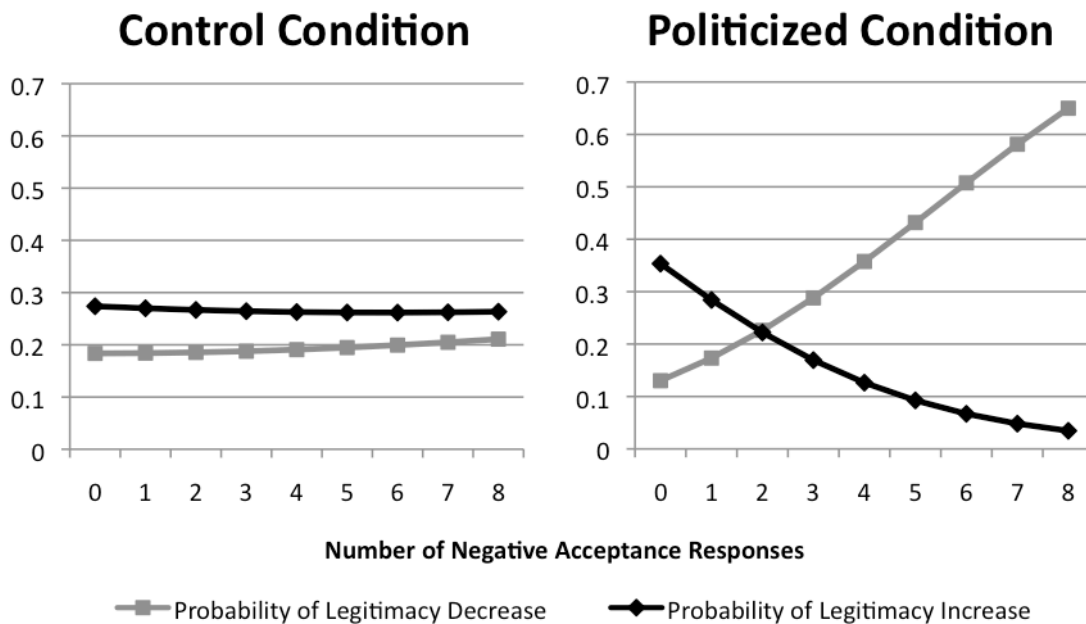
Figure 6.3- Effect of Politicization Manipulation on Probability of Legitimacy Decrease



The marginal effect displayed in this figure is the change in the predicted probability of a decrease in legitimacy when moving from the control to the unprincipled condition. The predicted probabilities and the 95% confidence intervals were calculated using Clarify (King, Tomz and Wittenberg 2000). The data comes from Table 3.

Figure 4 displays the results in a somewhat different manner to illustrate another interesting finding. In this figure, the predicted probability of legitimacy increasing and the predicted probability of legitimacy decreasing are graphed separately across the number of negative acceptance responses. In the control condition, the predicted probability of legitimacy increasing is always slightly higher by about 6 percent than the predicted probability of legitimacy decreasing. This difference is not statistically significant but it shows that in the control condition for everyone overall legitimacy is never predicted to decrease. The pattern in the politicized condition is dramatically different. In that condition, once someone is at three or above on the negative acceptance scale the predicted probability of legitimacy decreasing is higher than that of legitimacy increasing. This figure reiterates that overall legitimacy is shown to decrease for only those people who both encounter a displeasing decision and perceive the Court as using a politicized decision-making process.

Figure 6.4 – Predicted Probability of Legitimacy Change Across Two Conditions



Summary of Findings

These results show that a manipulation that changed perceptions of the Court's decision-making process to be less principled and more politicized also changed the mode used by the mass public to evaluate the Court. The subjects moved from a principled mode where the Court is evaluated based on abstract principles to a politicized mode where the Court is evaluated based on agreement with the policy implications of its decisions. In the control condition where the principled mode is used, legitimacy was the main driver of acceptance, and displeasing decisions did not decrease legitimacy. In the politicized condition where the politicized mode was used, policy agreement was the main driver of acceptance, and displeasing decisions did cause a decrease in legitimacy.

While the politicization manipulation changed the mode of evaluating the Court, it did not directly affect either the amount of legitimacy attributed to the Court or acceptance of its decisions. The correlation between legitimacy and the politicization manipulation was insignificant and insubstantial ($r=-.04$), and the correlation between acceptance and the politicization manipulation was insignificant and insubstantial ($r=.00$). Rather than directly affecting legitimacy and acceptance, the politicization manipulation changed the determinants of acceptance and when displeasing decisions cause a decrease in legitimacy.³²

Discussion and Conclusion

Perceptions of how the Court makes its decisions has long been thought an important determinant of whether the Court is perceived as legitimate. This relationship has usually been modeled as a simple direct relationship whereby any change in decision-making perceptions leads to a change in legitimacy perceptions. Many studies have found a cross-sectional

³² See Chapter 6 appendix C for a discussion about the use of a student sample and the external validity of the results.

relationship between these two types of perceptions and interpreted this as evidence for the simple direct relationship (Gibson et al. 2011; Scheb et al. 2000; Casey 1974). This study presented here provides a simple experimental test of this model and did not find any support for it. Additionally, this is not the first experimental study to manipulate decision-making perceptions and find no detectable change in legitimacy (Mondak 1993). Of course, these two null results should not immediately overturn decades of research supporting the simple direct relationship, but it does suggest that perhaps something else may be happening between decision-making and legitimacy perceptions.

Instead of the simple direct relationship, the predominant effect of decision-making perceptions on legitimacy could be from switching the mode of evaluation used to assess the Court. This switch could produce a cross-sectional relationship between decision-making and legitimacy perceptions in the absence of a simple direct relationship. Over time as the Court releases new highly salient decisions some portion of the population will inevitably disagree with them. For those using the politicized mode of evaluation, this results in a decrease in legitimacy attributed to the Court. For those using the principled mode, their legitimacy attitude is unchanged or possibly increases. Through this incremental process, over time, a cross-sectional relationship develops.

At the very least, this study shows that decision-making perceptions affect the Court and its legitimacy in more ways than previously thought and should cause scholars to consider these types of perceptions as even more essential than before. In particular, these results increase the importance of decision-making perceptions in ensuring judicial independence. Under the old view of a simple direct relationship between legitimacy and decision-making perceptions, decision-making perceptions help the judiciary remain independent by helping the Court

maintain a high magnitude of legitimacy. Legitimacy is of primary importance with decision-making perceptions playing a secondary role. Decision-making perceptions only matter because of their influence on the magnitude of legitimacy.

This changes under a model that includes the ability of decision-making perceptions to switch people from a principled to a politicized mode of evaluating the Court. With this model it is only through the combination of a perception of principled decision-making and a high magnitude of legitimacy that judicial independence can survive. If people perceive the Court as politicized, it doesn't matter whether they perceive the Court as legitimate. This legitimacy does not affect acceptance and thus cannot help to ensure compliance with decisions. Even if legitimacy could cause acceptance, once the Court makes a series of displeasing decisions the public's sense of legitimacy would quickly dissipate. Under this new model, decision-making perceptions are not of secondary importance, but instead occupy a place next to legitimacy as an equal partner supporting and ensuring an independent judiciary.

With the elevated position of decision-making perceptions it becomes essential to understand what influences these perceptions. Unfortunately, the current study cannot isolate these influences. The manipulation included information about the political activities of Clarence Thomas's wife, Elena Kagan not recusing herself from the health care case and brief mentions of other justices. This information caused the Court to be perceived as using a more politicized decision-making process, but since the manipulation involved many different parts, it is impossible to determine which aspect of the manipulation actually caused the change. More studies should begin to examine the determinants of decision-making perceptions (see Baird et al. 2006 for a study that has done this).

Some possible determinants of decision-making perceptions such as whether decisions are unanimous or whether justices recuse themselves are controllable by the justices, but I expect many if not most of the things that affect decision-making perceptions will be outside of the control of the Court's justices. All justices portray themselves as using principled decision-making and have a great incentive to encourage the public to continue to see them in that light. However, in the face of their efforts some members of the public will still perceive them as politicized. This may result from press coverage and other elites. Anyone who opposes a Court decision has incentive to portray the decision as politicized, irrespective of how the Court portrays itself. Another possibility is that people will be more likely to perceive any displeasing decision as politicized and any pleasing decision as principled. The one certainty is that too little is known about what causes people to perceive the Court as politicized or principled.

A Politicized Judiciary and its Role in the Political System

The legislature branch is commonly referred to as one of the political branches of government. The previous chapters have shown that a legislature being perceived as politicized does not cause a huge problem for the institution or the political system. A politicized legislature is still able fulfill its role in the political system as an institution of conflict and representation. The same cannot be said for a politicized judiciary. An appointed judiciary cannot fulfill its role as an institution of de-politicization without being perceived as using a principled decision-making process. Its main role is to induce acceptance of its decisions and defuse conflict, but just like the legitimacy of a legislature, the legitimacy of a politicized judiciary has no effect on acceptance. The only type of judiciary able to fulfill its role as an institution of de-politicization is one that is both appointed and perceived as principled. As shown in chapter 3, the legitimacy of any court associated with elections has low effectiveness and is unable to induce acceptance.

The legitimacy of a legislature, courts associated with elections and that of a politicized judiciary may all have a low effectiveness, but they differ greatly on the stability of legitimacy. Institutions associated with elections have the protection of elections to prevent displeasing decisions from decreasing legitimacy. A politicized judiciary lacks both the protection of elections and the protection of principled decision-making. Its legitimacy will move up and down with the public's evaluation of their policy decisions just like specific support. A politicized and appointed judiciary is perhaps the weakest institution possible. It can neither maintain its legitimacy in the face of displeasing decisions, and even if it were considered legitimate it could still not fulfill its role as an institution of de-politicization. While an elected judiciary is unable to act as an institution of de-politicization (see chapter 3), its legitimacy is at least able to resist the negative effect of displeasing decisions because of the protection provided by elections.

Chapter 7 – Conclusion: The Interaction Between Conflict and Legitimacy

This dissertation has concentrated on the interaction between conflict and legitimacy. In some cases, the analysis involved the way conflict affects legitimacy, and in others the way legitimacy affects conflict. It is essential to understand this interaction because conflict is an inherent part of all political systems. Disagreements will always exist within any society, and for a political system to survive it must be able to adapt to this conflict and disagreement. A major difference between various political systems is the type of conflict and the method used to adapt to this conflict. In a non-democratic system, the predominant form of conflict involves violence or at least the threat of violence. In this type of society, there is not a method for defusing conflict. Instead, a conflict ends when one side emerges victorious. Once that occurs, the conflict moves from an active stage to a latent stage. The conflict is still there, but it remains latent because of the threat of future violence. Whenever this fear of violence fails or there is some sparking event, the latent conflict moves to an active stage. This is perhaps what occurred during the Arab Spring. The conflict that had been kept latent through fear of violence suddenly became an active one. The use of violence is one manner of maintaining a somewhat stable political system, but it is not a self-sustaining one because there is no effective method of defusing conflict. Whenever an active conflict emerges violence is used to end the conflict, but the use of violence adds to the conflict and also reduces the legitimacy of the system.

Democratic systems have a different form of conflict and have a different method for adapting to this conflict. In terms of system stability, the democratic system has two advantages to the non-democratic one. The conflict in a democratic system helps to buttress its legitimacy, and it has a method for defusing conflict that does not reduce the overall legitimacy of the system. Because of these two adaptations, a democratic system is self-sustaining and able to deal with political crises and survive over the long-term.

The processes that build conflict in a democratic system are associated with elected institutions of representation. These institutions argue over the proper policy direction, and whichever side has the majority enacts its policy agenda. These institutions allow the public to express their voice and provide representation of the public's views. This helps to buttress the legitimacy of the system, and no democratic system can be considered legitimate without representation. Unlike in the non-democratic system where conflict decreased the legitimacy of the system, the conflict in a democratic system can increase legitimacy. However, even the conflict in a democratic system can at times overwhelm a political system, and there must be some mechanism in place to reduce the active conflict.

The processes that defuse political conflict are embedded in a separate institution of de-politicization and rely upon legitimacy rather than violence. For these institutions to be able to defuse conflict, they must be separated from the conflict and politicizing forces of the electoral process. For this reason only appointed institutions perceived as using a principled decision-making process can act as institutions of de-politicization. The use of legitimacy as a means for defusing conflict means unlike in a non-democratic system the act of ending a conflict does not reduce the legitimacy of the system and does not cause more conflict.

In a democratic system, the processes that build conflict and those that defuse conflict must be embedded in two separate institutions. What this dissertation has examined is the way in which the legitimacy of these two types of institutions helps them fulfill their roles in the political system. The legitimacy of elected institutions has specific properties that allow these institutions to be vehicles of political conflict and represent the public's viewpoint in public policy without this political conflict destroying the institution's legitimacy. As shown in chapter 5, the legitimacy derived from elections is resistant to the negative influence of displeasing decisions even when the institution is perceived as using a politicized decision-making process. The legitimacy of appointed institutions has different properties, and these properties allow it fulfill its distinctive role in the political system. As shown in chapter 4, the legitimacy for appointed institutions is high in effectiveness and is able to induce people to accept the institutions' decisions as final. This acceptance removes the issue from the political realm and defuses the conflict surrounding the issue.

It is only through the combination of an institution of conflict providing representation and an institution of de-politicization defusing conflict that a democratic system can remain stable. Every democratic system requires an institution that allows the public to express its voice and to represent the public's viewpoint, but it also requires an institution that can defuse political conflict before it overwhelms the political system. An institution of de-politicization is only effective when it is separated from the political conflict of the elected institutions, and this emphasizes the importance of the separation of powers and judicial independence in a way the literature has as of yet not recognized.

Separation of Powers, the Team of Institutions, and the Protection of Political Minorities

Normally, the literature on the separation of powers concentrates on the checks and balances system and the way in which it weakens the ability of the government to oppress political minorities. The framers emphasized this aspect of the separation of powers, and James Madison succinctly stated this in Federalist No. 51 when he described the system as one in which “ambition must be made to counteract ambition.” While it may be true that the institutions compete with each other to set public policy, much of the time they agree on the desired public policy. When this occurs, the institutions act as a team, and within this team, each institution has its own strength. The strength of the elected institutions is the high stability of their legitimacy, and the strength of appointed institutions is the high effectiveness of their legitimacy. The function of the team of institutions is to increase the stability of the political system and to strengthen the ability of the government to enact and enforce its will upon the public. Separation of powers helps to create this team of institutions because it creates different specialized institutions that are excellent at specific tasks.

This highlights a previously unnoticed feature of the separation of powers system. While it was designed as a way to weaken the power of a potentially tyrannical government, it also makes the team of institutions stronger in multiple ways. In one sense, the system is stronger because it should be more stable with both an institution of conflict and an institution of de-politicization. In another sense, it is more powerful because the separation of powers helps the political system induce the public to follow its commands. An effective institution of de-politicization is able to induce the public to accept those decisions with which it disagrees, and as shown in chapter 4 and 6, an institution is only able to be an effective institution of de-

politicization when it is perceived as separate from political and electoral conflict. The separation of powers system in America includes many institutional arrangements explicitly designed to separate the federal judiciary from the public will and political conflict.

This separation from the public and other institutions was designed to allow an independent judiciary, and one justification for the independent judiciary is the protection of minority rights. However, under some circumstances an independent judiciary may have the counter-intuitive effect of allowing more infringement upon minority rights. Only a judiciary perceived as independent and separate from political conflict can act as an institution of de-politicization, and an institution of de-politicization is able to induce those in the political minority to accept displeasing decisions and even possibly their own oppression. This means that if all the institutions of government are following the same policy, those in the minority may accept their own oppression precisely because of the separation of powers systems. As long as those in the political minority perceive an appointed judiciary as legitimate and separated from political conflict, the results presented in chapters 4 and 6 suggest they will accept the decision promulgated by the political system.

If however the system did not have an independent judiciary perceived as separated from political conflict, the political system would not be able to induce a political minority to accept their own oppression. In this case, the political system has no institution of de-politicization and instead the political minority would continue to challenge its oppression for the foreseeable future. Unfortunately in this circumstance the political system would eventually be overwhelmed by the political conflict, and the only way for this type of political system to induce the members of the oppressed minority to quit challenging the decision would be through the use of force.

These two extremes examples of a political system – one with a highly effective institution of de-politicization and one without an institution of de-politicization – represent a normative dilemma. In the system with an effective institution of de-politicization, the oppression of political minorities is relatively easy because the system is able to induce minorities to accept their own oppression. This seems like a troubling prospect, but the other option is just as troubling. In a system without an effective institution of de-politicization, the political system is unstable. The oppressed, dispossessed, and displeased political minorities will continue to challenge the decisions of the government and political system, and eventually this will lead to political instability and possibly even violence.

This discussion highlights the ways in which the separation of powers system can protect political minorities in some circumstances but in others can make it easier to oppress political minorities. Under the circumstances that one counter-majoritarian institution is protecting political minorities the separation of powers system increases the protection for political minorities. The one counter-majoritarian institution will provide a check on the other two institutions of government. But if this aspect of the separation of powers system breaks down and all institutions of government support the oppression of political minorities, the separation of powers system makes this oppression even easier. Because the separation of powers system provides a judiciary perceived as independent and separated from political conflict, political minorities will accept the judiciary's decision and not challenge their own oppression. Without the separation of powers system providing an effective institution of de-politicization, the political minority would continue to challenge their own oppression.

The Tension Between Representation and Stability

At its most fundamental level, a democratic political system is legitimized through the value of representation and the ability of the public to express their voice. No democratic political system could survive without this representation, and that is why all democratic systems require a functioning elected institution of conflict and representation. However, a political system cannot survive on representation alone. These elected institutions produce conflict that must be defused before it overwhelms the political system. It is here that institutions of de-politicization step in to defuse the political conflict and induce acceptance. As discussed in the previous section, these institutions are effective because they are part of a separation of powers system and kept separate from political conflict and outside influence. In other words, they are effective because they explicitly reject representation of the public's views as a justification for their decisions or their legitimacy. Also, they are only effective because they induce the public to accept displeasing decisions which the public would otherwise want to challenge. Thus, an effective institution of de-politicization is one that is not held accountable to the public and convinces the public to do things it otherwise would not want to do. This goes directly against the value of representation so central to democratic legitimacy.

At some level, the major difference between an institution of de-politicization and a violent dictatorial regime is the type and strength of the tools used to induce the public to follow its commands. For a dictator, powerful tools like violence and economic payoffs are available to induce the public to follow his or her commands. The judiciary only has the ability to convert its legitimacy into acceptance of its decisions, and this acceptance will cause the public to follow the judiciary's commands. The more powerful tools of the dictator allow a greater ability to exploit or oppress political minorities, but for both the dictator and the independent judiciary

they are still institutions not held accountable to the public that are forcing the public to do something they would otherwise not want to do. This represents a dilemma for those who value representation as the ultimate goal of government. A political system that is designed to represent the viewpoints of the public is most stable with an institution that acts similar to a dictator. Admittedly, the dictatorship of the appointed judiciary is weak and perhaps even enlightened one, but the enlightened nature of a dictatorship does not change its non-democratic character.

Luckily for those who value representation, the ability of an institution of de-politicization to effectively defuse conflict does not rely upon that institution *actually being* separated from political conflict. All that matters is that the *public perceives it as being* separated from political conflict. If an institution of de-politicization is perceived as being separated from political conflict but is actually accountable to the same political forces as the other branches of government, the institution would be an effective institution of de-politicization while still representing the views of the public. This would be a system that is both stable and upholds the value of representation to the greatest extent. This is perhaps the situation with America's institution of de-politicization - the U.S. Supreme Court. The empirical literature generally portrays the Court as politicized (Segal and Spaeth 2002) and to at least some extent following public opinion (Dahl 1957; Mishler and Sheehan 1993), but at the same time, it is perceived as using a principled decision-making process.

Those who value representation as the ultimate goal of government are not given an easy choice if they also value stability. They can have a wholly representative system but this requires misleading the public by convincing them that a political branch of government is not actually

political. The other option is to allow an otherwise representative system of government to include some small element that resembles a dictatorship.

The Many Properties of Legitimacy

All of the analyses and conclusions contained here rely upon a new way of conceptualizing and studying legitimacy. Legitimacy comes in many different forms, and each type of legitimacy interacts with the public and affects the political world in a different way. It is not enough to only know whether some institution is legitimate or not. It is also essential to know the type of legitimacy and the properties of that type of legitimacy. In this dissertation, I identified two types of legitimacy: legitimacy derived from election and legitimacy derived from principled-decision-making. These are not the only types of legitimacy. For example, Weber (1978) in his monumental work *Economy and Society* identified three different types of political authority. Each type of political authority was considered legitimate for a different reason, or in other words, the legitimacy of each type of authority was derived from a different source. Charismatic authority was derived from the extraordinary abilities of a single individual. These abilities are “regarded as having a divine origin, and on this basis they come to hold power and are treated by others as leaders (pg 241).” Traditional authority is based on custom and the “sanctity of age-old rules and power (pg 226).” The third type of authority called legal-rational authority is what modern democratic societies rely upon. This type of authority is based on following the rule of law. Decision-makers are considered legitimate not because of who they are but because of the position they inhabit. Each of these is a different type of legitimacy, and in his work, Weber identified the different mechanisms through which each type of legitimate authority exercised power over people.

The task I attempted in this dissertation is somewhat similar to Weber's analysis of the different sources of authority. I identified two different sources of authority – elections and principled-decision-making³³ – and tried to determine the different ways that these two types of authority or legitimacy interact with the public. Of course, the methods were dramatically different, but the goal was the same – to understand how the different forms of legitimacy function in a political system.

I began that analysis by identifying three different properties of legitimacy: magnitude, effectiveness and stability. The goal of the analysis was to determine the properties for each type of legitimacy, but during the analyses two more properties became evident. These new properties can be thought of as sister properties to the effectiveness and stability of legitimacy. The effectiveness of legitimacy involves acceptance judgments. The sister property of effectiveness is called persuasiveness and involves agreement with the policy implications of a decision rather than acceptance. The stability of legitimacy involves whether a displeasing decision decreases legitimacy. Its sister property called responsiveness involves whether a pleasing decision increases legitimacy. The empirical evidence showed that it is important to separate effectiveness and stability from their sister properties. Chapter 4 showed that legitimacy is highly effective under some circumstances but is low on persuasiveness. Chapter 5 showed that the conditions under which a pleasing decision leads to an increase in legitimacy are different than the conditions under which a displeasing decision leads to a decrease in legitimacy. All five properties are defined below:

- 1) The *magnitude* of a legitimacy attitude is the amount of legitimacy attributed to an institution.

³³ Legitimacy derived from elections and legitimacy derived from principled-decision-making should be considered sub-categories of Weber's legal-rational authority.

2) The *effectiveness* of a legitimacy attitude is the degree to which the magnitude of legitimacy attributed to an institution is converted into acceptance of specific decisions.

3) The *persuasiveness* of a legitimacy attitude is the degree to which the magnitude of legitimacy attributed to an institution is converted into agreement with the policy implications of specific decisions.

4) The *stability* of a legitimacy attitude is the degree to which the magnitude of legitimacy attributed to an institution resists the negative influence of displeasing decisions.³⁴

5) The *responsiveness* of a legitimacy attitude is the degree to which the magnitude of legitimacy attributed to an institution increases as a result of the positive influence of pleasing decisions.

To fully understand the manner in which legitimacy affects the political world, the literature must move beyond solely examining variation in the magnitude of legitimacy. Legitimacy comes in many forms, and these different forms of legitimacy vary in ways other than magnitude. Each form of legitimacy has a distinct set of properties, and these different properties allow it to fulfill a specific role in the political system. One set of properties is not necessarily better than another. The important thing is for the properties of an institution's legitimacy to match the institution's role in the political system. The only way to determine the conditions under which this match occurs is to examine variation in all the properties of legitimacy.

The U.S. Congress and the U.S. Supreme Court

While the data in this dissertation mostly involve state institutions (except for chapter 6), its theory should also apply to federal institutions and can help to explain some of the differences

³⁴ In future iterations I will probably just call this property resistance. Stability implies that legitimacy neither increase nor decreases. If this is changed to resistance, then resistance and responsiveness become two aspects of the stability of legitimacy. But, I have already used stability throughout the whole dissertation and will keep it as stability for now.

between the U.S. Congress and the U.S. Supreme Court. Virtually all the literature comparing these two institutions examines only the differences in their magnitude of support (Price and Romantan 2004; Richardson Jr, Houston and Hadjiharalambous 2001; Hibbing et al. 1995, 2002; see Gibson et al. 2005 for an exception). The current literature usually uses measures like confidence, favorability or process perceptions that tap into specific support more than diffuse support or legitimacy (Gibson et al. 2003a), and the results generally show that the U.S. Supreme Court is seen in a more favorable light than the U.S. Congress. In recent times, the level of support for the U.S. Congress has reached all-time lows. For example, only 13 percent of the population approved of the way Congress is handling its job in a March, 2013 Gallup survey. In a 2011 Gallup survey, people rated the honesty and ethical standards of various professions and placed members of Congress at the very bottom. 64 percent rated their honesty and ethics as being low or very low. This survey data generally portrays an institution in crisis, with an American population that should be ready to turn against it at any point, but this is a false characterization. The legitimacy of the U.S. Congress and its place in America's constitutional system of government is not seriously questioned, except for at the extremes of the political spectrum.

In a national survey conducted in 2001 by Gibson, Caldeira and Spence (2005), 75 percent of the population said that people should obey Congress even when they disagree with the law and 83 percent of population disagreed with the statement that America should do away with Congress. Congressional approval was higher in 2001 so that could be the cause of these more positive survey data, but I expect that is not the case. In polls from more recent times, people still express strong loyalty to the American system of government. In a Washington Post poll from Sept. 2011, 77 percent agreed with the statement that "Whatever its faults, the United

States still has the best system of government in the world.” Additionally, in a Fox News poll from April 2011, 84 percent said that the United States is the best country in the world to live in.

The theory and data presented in this dissertation can explain how Congress can be disliked, distrusted and perceived as filled with dishonest and unethical members, but at the same time generally be considered legitimate. The U.S. Congress is an institution of conflict. Because its legitimacy is derived from elections, its legitimacy is able to withstand this onslaught of negativity without a substantial decrease in legitimacy. The role of the U.S. Congress is to represent the views of the American public. The political conflict that follows from this representation will cause people to have negative feelings toward the institution, but its legitimacy can withstand this negativity. By containing the negativity to this one institution that can withstand it, it does not leak out to the other institutions of government.

If this negativity did leak out and infect the U.S. Supreme Court, it would cause problems for the Court. Imagine a hypothetical situation where the U.S. Supreme Court is perceived in the same negative manner as the U.S. Congress. Would the legitimacy of the U.S. Supreme Court be as secure today as the legitimacy of the U.S. Congress? The theory and data presented in this dissertation suggest that it would not, but this is not a problem. The conflict inherent in representation and allowing the public to express its voice is separated from the U.S. Supreme Court. Its role in the political system as an appointed institution of de-politicization means its legitimacy does not need to be able to resist this negative influence. Instead it has a different role that the U.S. Congress cannot fulfill. It must defuse political conflict.

The resolution of the 2000 Presidential election crisis in America illustrates both the role the U.S. Supreme Court plays as an institution of de-politicization and how the U.S. Congress could never fulfill this role. This crisis had the potential to spin out of control and lead to

massive and prolonged protests that in other countries could have threatened the stability of the political system, but this did not happen. Instead, the U.S. Supreme Court issued an opinion that effectively chose the winner of the election. Following the decision in *Bush v Gore*, there was some uproar on the Democratic side, but generally among the mass public, people accepted the decision as final and the legitimacy of the U.S. Supreme Court was not seriously hurt (Gibson, Caldeira and Spence 2003b). This is a perfect illustration of the way an institution of de-politicization is supposed to function. Some political conflict emerges. The institution makes a decision. Not everyone agrees with the decision, but they accept it and move on. The decision does not lead to a decrease in the magnitude of legitimacy for the deciding institution. This is an extreme example of the role that an institution of de-politicization should play. Most decisions will not be as important as *Bush v Gore* or be so directly tied to a monumental political crisis. During normal times, institutions of de-politicization defuse many tiny political conflicts every year and prevent these many tiny political conflicts from combining and growing into larger ones. It is only during times of extreme political crisis that their role becomes so blatantly obvious.

The 2000 election crisis also demonstrates the limitations of elected institutions and a system built purely upon institutions of representation. In a scenario where the resolution of the 2000 election crisis was decided by the U.S. Congress rather than the U.S. Supreme Court, the reaction would have been an order of magnitude greater and more negative. The dispute was over a political conflict, and any institution that is directly connected to that political conflict cannot end the conflict. There has to be some institution separated from the political conflict to decide those issues that cannot be solved through the normal electoral or political process.

The negative feelings toward Congress and the 2000 election dispute are two real-world situations that illustrate the differences between the legitimacy of elected and appointed institutions . The legitimacy of the U.S. Supreme Court could never withstand the large amount of negative feelings currently directed toward the U.S. Congress, but the legitimacy of the U.S. Congress can and has. No action by the U.S. Congress could have ended the 2000 election dispute without that action adding fuel to the already tumultuous situation, but when the U.S. Supreme Court issued a decision, its legitimacy caused the country to accept it and move on.

This discussion should not be taken as a statement that the U.S. Supreme Court is the perfect or even always an effective institution of de-politicization. For the U.S. Supreme Court to act as an effective institution of de-politicization it must be considered highly legitimate and be perceived as using a principled decision-making process. This is the case for many Americans but not all (Gibson et al. 2009, 2011). Additionally, sometimes the Court’s decisions create conflict where there was none before. *Roe v Wade* is a good example of this. At the time of *Roe*, abortion was an issue that both political parties mostly agreed upon. Only a few years after *Roe*, it had become a highly politicized and partisan issue and does not appear to be going away anytime soon (Adams 1997). No institution of de-politicization is perfect, and when it steps outside its role, it can add to rather than defuse conflict. *Roe v Wade* and *Bush v Gore* illustrate the differences between the conditions where it adds to rather than defuses conflict. In *Bush* the Court came in at the end of a conflict began by the other branches of government. In *Roe* the Court issued an opinion on an issue that was not part of the current political conflict.

Judicial Selection Method and Legitimacy

This project began from asking a relatively simple question: “How do judicial elections affect legitimacy?” I was attempting to come to terms with how an election can be both a

legitimizing and a politicizing force. One side of the debate on judicial elections emphasized the legitimizing force (Gibson 2012; Gibson et al. 2010) while the other emphasized the politicizing force (Cann and Yates 2008; Jamieson and Hardy 2007; Benesh 2006; Wenzel, Bowler and Lanoue 2003). Each side had empirical evidence supporting their views, and one approach I could have taken with this dissertation would be to use yet another slightly different empirical approach to answer the question of “How do judicial elections affect legitimacy?” This is what I did in chapter 3, but I decided that the only way to really answer this question was to think more deeply about the concept of legitimacy itself. But when I began to change how I thought about legitimacy, I began to change the question I was asking. The question was not whether elections increased or decreased legitimacy. The question should be about how elections changed the substance from which an institution’s legitimacy is composed. Not all legitimacy comes in the same form, and every form of legitimacy affects the political world in a different way. I realized that the major effect of elections on legitimacy was not to cause an institution to have more or less of it, but to transform legitimacy from one form to another. As I developed this theory further, I realized that the question had moved beyond the world of judicial elections. It had become an examination of how the legitimacy of appointed and elected institutions function in a political system, and the roles that these two types of institutions should play. The wide variation in selection systems for the 50 state supreme courts provides a unique ability to test the differences between the legitimacy of appointed and elected courts.³⁵ By understanding the differences between elected and appointed courts and comparing them to state legislatures, I could begin to understand the differences between elected and appointed institutions in general.

³⁵ To simplify the language, I use the terms elected and appointed courts rather than the terms courts associated with elections and courts associated with appointment systems. When I say elected and appointed courts, I really mean courts associated with elections and courts associated with appointment systems.

While the project has moved beyond the world of judicial elections, it still offers insight into how these elections affect legitimacy and state supreme courts. Chapter 3 showed that the voice effects associated with elections increase the magnitude of legitimacy, but the negative effects associated with the campaigns surrounding elections counteracts the positive voice effects. The effects on the magnitude of legitimacy are small though compared to the size of the effects on the effectiveness and stability of legitimacy demonstrated in chapter 4 and 5. Those chapters showed that the major effect of elections on legitimacy is to change it from a form of legitimacy derived from principled decision-making to a form of legitimacy derived from elections. This transformation may increase the stability of a court's legitimacy, but it has the detrimental effect of decreasing the effectiveness of a court's legitimacy.

When thinking about the effects of judicial elections in this way, it turns out that both sides of the debate are correct. Judicial elections do politicize courts and make them just like any other elected institution. However, because these elections also transform legitimacy from one derived from principled decision-making to one derived from elections, this politicization does not have a huge negative effect on legitimacy. The legitimacy of elected courts was somewhat lower than appointed courts, but the legitimacy for elected courts was still higher than the legitimacy of state legislatures.³⁶ This transformation in legitimacy when looked at as an isolated event may not seem troubling, but when state supreme courts are considered as one part of a complete political system, it becomes potentially troubling. By transforming a court's legitimacy

³⁶ The mean on the legitimacy index for the state legislature condition is .51. To compare this to a court associated with elections and one associated with an appointment system, I calculate a predicted value of legitimacy using the model in Table 3.4 while holding everything except state election salience at its mean. For a court highly associated with elections (95th percentile of state election salience) the predicted value of legitimacy is .57. For a court highly associated with an appointment system, the predicted value of legitimacy is .63.

in this way, judicial elections deprive those states with elected courts of an institution of de-politicization.

Each institution is supposed to fulfill a specific role in the political system, and to fulfill this role its legitimacy must have a specific set of properties. Legitimacy derived from principled decision-making is not necessarily better or worse than legitimacy derived from elections, but the type of legitimacy should match the role of the institution. If the legitimacy of a legislature was derived from principled decision-making that would be troubling because that institution's legitimacy would quickly diminish. If the legitimacy of a court is derived from elections, this is just as troubling. The legitimacy of an elected court would be stable, but it would have a low effectiveness. This means that the court's legitimacy would not be able to induce the public to accept the court's decisions. The court would be left without its only effective tool to enforce compliance with its decisions, and it would also leave the state's political system without an effective means to defuse political conflict.

The Political Stability of States With Elected Courts

If electing judges deprive states of their most effective institution of de-politicization, conflict could eventually overwhelm the political systems of these states and cause political instability, but this has not occurred in the United States. Since the American Civil War, no state's political system has experienced an excessive amount of instability. For my theory to hold, some explanation of how states with elected state supreme courts survive is required. I offer three. First, in most states with elected courts for most of their history the level of election salience has been low enough that the state supreme court can be an effective institution of de-politicization. Second, state supreme courts are not the only institutions of de-politicization.

Third, legitimacy is not the only tool available for maintaining political stability. It is just the most normatively appealing one.

Low Election Salience

The first explanation involves the concept of election salience. An elected court can still fulfill the role of an institution of de-politicization as long as state-level election salience is not too high. It is only for courts very high on state-level election salience where the effectiveness of their legitimacy is reduced to virtually zero. In states in the middle of the salience spectrum, the state supreme court's legitimacy affects acceptance, and thus these institutions can still act as institutions of de-politicization. As shown in chapter 2, most states with competitive elections do not fall on the extremely high end of state-level election salience. Thus, for most states with elected judges, the level of election salience is low enough that their state supreme courts can still act as somewhat effective institutions of de-politicization. These courts will not be as effective as most appointed courts, but they still have the ability to defuse political conflict.

In addition, the current level of election salience does not guarantee that election salience has been high during the past. The literature on judicial elections has noted that the elections have become more contentious and more salient in the past few decades. It has differentiated between the "old-style" judicial elections of the relatively remote past and the "new-style" judicial elections of the last few decades. This new trend in judicial campaigns was first noted in the late 70's and early 80's. Hojnack and Baum (1992) note that before this time period most judicial elections were uncontested and "the real contests that occurred generally involved limited spending, limited media coverage, and – in part because of rules of legal ethics – little or no discussion of policy questions" (pg 922). Champagne (2001) described an "old-style" judicial campaign as "a low budget affair where the judicial candidate spoke to any group willing to hear

a dull speech about improving the judiciary or about judicial qualifications. There were numerous hands to shake, bar and newspaper endorsements to obtain, and that was about it” (pg 1393).

The change to the “new style” judicial campaign began in earnest during the 80’s, accelerated in the 90’s, and has reached new levels in the last decade. This “new-style” campaign now resembles a campaign for any other type of public office. Candidates raise vast amounts of money, run campaign advertisements, and in the wake of the decision in *Republican Party of Minnesota v White* make policy pronouncements during the campaign. Sample et al. (2010) described the vast increase in the amount of campaign advertising and the amount of money spent during campaigns in the last decade. During the elections in the years 1989-93, \$15.4 million was raised for judicial campaigns. During the years 2005-2008, this figure increased to \$78.9 million dollars. This increase in the salience of judicial elections has been noted repeatedly by scholars and is not in real dispute. It is the reason that so much interest has been paid to these elections in the literature, and the debate is not over whether “new-style” judicial campaigns exist but what effect they have on courts.

While further study is required to fully grasp the determinants of election salience, almost certainly more salient, expensive and contentious campaigns for judicial offices increase election salience. The “old-style” judicial campaign is the exact opposite of a salient, expensive and contentious campaign, and thus any state where this style predominates should be relatively low in election salience. Because of this, even if a state has elected judges, if judges run “old-style” campaigns, the court legitimacy’s will have a somewhat high effectiveness and still be able to function as an effective institution of de-politicization. However, in a state where the “new-style”

judicial campaigns have taken over, the level of election salience will increase to levels where the state supreme court is no longer able to fulfill this role.

It is not the election of judges per se that leads a state to be without an effective institution of de-politicization. It is only when these elections change from the low salience “old-style” to the highly salient “new-style” that this loss occurs. This helps to explain how states like Wisconsin, West Virginia and Montana that are extremely high on state-level election salience could have remained politically stable during the past. For most of their history, the level of election salience was much lower, and thus, for most of their history, their state supreme court was an effective institution of de-politicization. It is only in the past few decades when “new-style” judicial campaigns emerged that the level of election salience reached its currently high level. A political system deprived of an effective institution of de-politicization will not become unstable over night. It takes time for conflict to build, and it also takes some sort of crisis or spark to appear for the conflict to ignite and disrupt the stability of a political system. The relatively short amount of time since “new-style” judicial campaigns emerged has not allowed the build-up of a sufficient amount of conflict or for the appearance of a crisis to ignite this conflict into a de-stabilizing event.

Other Institutions of De-politicization

State supreme courts are not the only institution of de-politicization that can defuse political conflict in the American states. Each state’s judicial system is embedded within a larger federal network of courts. Atop this network lies the U.S. Supreme Court, which can for many issues act as an institution of de-politicization for the states. The U.S. Supreme Court cannot defuse all political conflicts because it lacks the jurisdiction in cases that do not involve federal law, but not all political conflicts must be defused for a political system to remain stable over the

long-term. All that is required is that some equilibrium is reached between the amount of conflict created and the amount of conflict defused where the conflict does not reach a critical threshold. Even if the U.S. Supreme Court is not able to defuse all political conflicts, it still may be able to defuse enough political conflict to keep the level below this threshold.

As well as having the U.S. Supreme Court available to defuse political conflict, every state has other appointed institutions that are also able to defuse political conflict. The defining feature of an institution of de-politicization is not that it is a judicial institution, but that it is an appointed institution separated from the political conflict of elections and representation. The other major appointed institutions within states are the bureaucracy and independent regulatory agencies. While these are all appointed, they are not all equally able to act as institutions of de-politicization.

State supreme courts are effective institutions of de-politicization when they are perceived as independent of the electoral process. While all decision-makers within the bureaucracy are appointed, they are not all equally independent. Many of them are directly accountable to a governor or president. It is only those parts of the bureaucracy that are both appointed and perceived as independent by the public that are able to be effective institutions of de-politicization. For example, at the federal level something like the Department of Labor would not be an effective institution of de-politicization because the leader of that institution – the Secretary of Labor – is directly accountable to the President. This type of bureaucratic institution follows the broad policy set by the elected President, and thus is not sufficiently separated from political conflict.

Many parts of the bureaucracy sometimes called independent regulatory agencies are set up to be independent of the political process. The officials in these agencies are similar to those

in an appointed court in that once appointed the political branches of government are not supposed to interfere with their decision-making. Also, in some cases the appointed officials just like judges can only be removed from their position for unethical behavior. Another commonality between judges and this type of appointed official is that they are both specialists and experts in a certain field. For judicial institutions, they are experts in the interpretation of the law. For independent regulatory agencies, they are experts in some technical field that requires specialized knowledge. Because of this specialized knowledge, the judgment of these individuals should be respected and their decisions accepted (but only if they are using a principled decision-making process). As a result, independent regulatory agencies do have the potential to act as institutions of de-politicization. The major weakness of these agencies is the narrowness of the issues on which they can make decisions. They are assigned a very specific area and are unable to make decisions beyond that area. Judicial institutions on the other hand are able to issue decisions on almost all political issues. All a court needs to do is wait for someone to bring them a case involving that issue, which on virtually any controversial issue will happen.

Because of independent bureaucratic agencies and the U.S. Supreme Court, even states with extremely high election salience are not left devoid of institutions of de-politicization. They are just left without the best available institution of de-politicization. Instead of having one institution that can defuse political conflict across all types of issues, these states are left with a patchwork of different agencies and courts that can issue decisions on some but not all issues. This is not the optimal solution, but it is one that may be good enough to reach a steady equilibrium between the processes that produce conflict and those processes that defuse conflict.

Other Methods of Maintaining Stability

In Federalist 78, Alexander Hamilton described the power of the judiciary as having “no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment.” This judgment is the method used by institutions of de-politicization to maintain political stability. The institution makes a decision, and because people respect the judgment of the decision-makers, the decision is followed. This is a completely voluntary process in which people willingly choose to follow a decision with neither coercion nor enticement. However, this voluntary process relying upon legitimacy is not the only method for maintaining stability. The enticement of the purse and the coercion of the sword are both effective means. The sword maintains stability by acting as a punishment when some group attempts to destabilize the system. The purse obtains the same result by rewarding groups for continuing the current political system. If people are doing well under the current system, they have no incentive to destabilize that system.

Legitimacy, rewards and punishments are three different methods that a political system can use to maintain political stability, and they can be separated into two basic categories. Rewards and punishments can be characterized as the rational choice mechanisms for maintaining stability. People make a cost benefit analysis of whether they want the current political system to continue. If they could receive some increased benefits from a change in the political system, they must weigh this against the probability and severity of the potential punishment. If the benefit outweighs the cost, they take the destabilizing action, and if the reverse holds, they take no action and continue life under the current political system.

Legitimacy can be characterized as the psychological method for maintaining stability. Under this explanation, people do not support a political system because the benefits outweigh the costs. They support the system because they believe it is the proper form of governance. This method works through a purely voluntary mechanism in which people choose to support a political system, without reference to the incentives provided by rewards and punishments.

All political systems use both types of methods for maintaining political stability. Democratic political systems rely predominately upon legitimacy, but they also use the incentives caused by rewards and punishments. The American Civil War was the use of violence and punishment to maintain a democratic political system, and throughout American history protest movements whether Occupy Wall Street, labor movements or the Communist Party have been met with violence that is either government sponsored or at least tacitly approved by the government. Some have called the social welfare system a method to maintain an unequal capitalist democratic system. Social welfare policies provide a small reward to the least well off, and this shifts the cost-benefit analysis in favor of maintaining stability.

Dictatorial systems rely predominately upon rewards and punishments, but they also attempt to inculcate some degree of legitimacy. The Baath Party of Saddam Hussein's Iraq talked about Arab Nationalism. The current rulers of Iran bathe themselves in the coat of Islam. Many rulers of post-colonial Africa legitimized their rule through their leadership of the "revolution". The medieval kings of Europe used the legitimizing concept of the divine right of kings.

This dissertation concentrated solely on the processes through which legitimacy helps to maintain political stability. By doing so, it underestimated the stability of political systems. For a political system to become unstable both its legitimacy must falter, and the cost of destabilizing

activity must be less than the benefit. One reason for the continued stability of the American states is that the benefits provided by the system – steady economic growth and a minimal social welfare system – is vastly outweighed by the costs of any potential destabilizing action. The vast heavily armed law enforcement apparatus and the most powerful military in the world can easily deal with any potential threat to the system. The active use of punishment would cause a decrease in legitimacy, but when used sparingly and as a last resort, it is still a force that can help maintain a political system.

Stability and Judicial Elections

The election of judges is a negative influence on political stability, but it does not represent an imminent crisis that will cause the overthrow of a state government. States have other tools that while less effective do help maintain stability, and somewhat ironically the public's lack of knowledge about judicial elections prevents them from hurting political systems too much. Because of this under normal circumstances, the political stability of the American states is secure, but legitimacy and its ability to maintain stability is most important during the abnormal circumstances. If some new crisis such as the Great Depression emerges, the cost-benefit analysis underpinning political stability will change. The weaker institutions of de-politicization available to states with both elected courts and "new-style" campaigning may not be up to the task of dealing with this new crisis and the avalanche of political conflict caused by it. It is only under abnormal circumstances that the stability of a political system is truly tested. Every state may even be able to survive a new crisis, but in those states with weaker institutions of de-politicization, rather than using legitimacy to survive a crisis they may have to turn to the less normatively appealing tools such as force or economic payoffs.

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Chapter 3 - Appendix A – Descriptions of Control Variables

Court Awareness

Court Awareness 1 - Would you say you are very aware, somewhat aware, not very aware or have never heard of (insert institution name)?

- Very aware
- Somewhat aware
- Not very aware
- Have never heard of it

Court Awareness 2 – How often do you read or hear news about the (insert institution name)?

- Very often
- Often
- Somewhat often
- Not very often
- Almost never
- Never

To construct the court awareness variable, each item is recoded from 0 to 1 and then the two are added together. This variable is then recoded again from 0 to 1. The two items are correlated with $r=.55$.

Election Fairness

Election Fairness 1 - Elections held in (insert home state) are conducted in a free and fair manner.

- Strongly Agree
- Agree
- Neither Agree nor Disagree
- Disagree
- Strongly Disagree

Election Fairness 2 - Electoral fraud is common in (insert home state).

- Strongly Agree
- Agree
- Neither Agree nor Disagree
- Disagree
- Strongly Disagree

To construct the court awareness variable, each item is recoded from 0 to 1 and then the two are added together. This variable is then recoded again from 0 to 1. The two items are correlated with $r=.51$.

Rule of Law

Rule of Law 1 - It is not necessary to obey a law you consider unjust.

Strongly Agree
Agree
Neither Agree nor Disagree
Disagree
Strongly Disagree

Rule of Law 2 - Sometimes it might be better to ignore the law and solve problems immediately.

Strongly Agree
Agree
Neither Agree nor Disagree
Disagree
Strongly Disagree

To construct the court awareness variable, each item is recoded from 0 to 1 and then the two are added together. This variable is then recoded again from 0 to 1. The two items are correlated with $r=.51$.

Governor Knowledge

Governor Knowledge – Do you happen to know who currently holds the office of governor in *(insert home state)*?

(Allow open-ended response)

All those who input the correct name were coded as 1 and those who input the incorrect name as 0. 84 percent of the subjects provided the correct answer. This item was meant to act as a rough measure of general political sophistication. I could not use knowledge about the court itself because all items needed to apply to both a legislature and a court. By asking about the executive branch, I could get some idea of political sophistication without specifically asking about the legislature or the judicial branch.

Education

The education variable is part of the standard demographic profile provided by YouGov for all its surveys.

Post-Grad
4-Year
2-Year
Some College

High-School Graduate
No High School

This variable is recoded from 0 to 1.

Chapter 3 - Appendix B – Complete Models from Table 3.1

Table B.3.1 - Effect of Manipulation on Legitimacy

	Competitive Elections	Retention Election	Appointment System
VARIABLES	Legitimacy	Legitimacy	Legitimacy
Manipulation	.030* (.013)	.035 ^X (.019)	.008 (.020)
Politicization Perceptions	-.292* (.053)	-.464* (.052)	-.480* (.058)
Specific Support	.191* (.057)	.110 (.111)	.074 ^X (.039)
Election Fairness	.006 (.027)	.057* (.026)	.039 (.057)
Rule of Law	.140* (.037)	.118* (.044)	.055 (.039)
Governor Knowledge	-.018 (.023)	.029 (.034)	.047 (.066)
Court Awareness	.256* (.051)	.153* (.062)	.005 (.061)
Education	.112* (.017)	.084* (.037)	.078 ^X (.040)
State Election Salience	-.051* (.018)	-.043 (.043)	.030 (.056)
Individual Election Salience	.009 (.011)	-.009 (.013)	-.025* (.008)
Constant	.360* (.093)	.480* (.109)	.676* (.135)
Observations	735	376	356
Number of groups	22	16	12

Robust standard errors in parentheses

* p<.05, ^X p<.1

This model is estimated using OLS and includes a random intercept that varies by state. All variables except state and individual level election salience are coded with 0 as the minimum and 1 as the maximum.

Table B.3.2 - Effect of Manipulation on Specific Support

VARIABLES	Competitive Elections	Retention Election	Appointment System
	Specific Support	Specific Support	Specific Support
Manipulation	-.022 (.016)	-.027 (.025)	.023 ^X (.012)
Legitimacy	.247* (.074)	.121 (.121)	.084 ^X (.050)
Politicization Perceptions	-.614* (.079)	-.680* (.073)	-.72* (.102)
Election Fairness	.186* (.072)	.173* (.025)	.180* (.054)
Rule of Law	-.034 (.045)	.041 (.051)	-.065* (.030)
Governor Knowledge	.023 (.023)	-.117* (.022)	-.051 (.034)
Court Awareness	-.191* (.060)	.014 (.024)	-.094* (.044)
Education	-.076* (.036)	-.040 (.026)	-.080* (.039)
State Election Salience	.036 (.035)	.003 (.045)	-.008 (.025)
Individual Election Salience	-.008 (.009)	.013 (.014)	.030* (.014)
Constant	.812* (.097)	.891* (.136)	.986* (.118)
Observations	735	376	356
Number of groups	22	16	12

Robust standard errors in parentheses

* p<.05, ^X p<.1

This model is estimated using OLS and includes a random intercept that varies by state. All variables except state and individual level election salience are coded with 0 as the minimum and 1 as the maximum.

Table B.3.2 - Effect of Manipulation on Politicization Perceptions

VARIABLES	Competitive Elections	Retention Election	Appointment System
	Politicization Perceptions	Politicization Perceptions	Politicization Perceptions
Manipulation	-.009 (.014)	.009 (.011)	.012 (.011)
Legitimacy	-.207* (.044)	-.304* (.035)	-.299* (.049)
Specific Support	-.347* (.043)	-.388* (.035)	-.369* (.039)
Election Fairness	-.113* (.033)	-.161* (.053)	-.154 ^X (.080)
Rule of Law	-.065* (.025)	.021 (.025)	-.025 (.022)
Governor Knowledge	-.021 (.020)	-.001 (.028)	-.008 (.040)
Court Awareness	.030 (.045)	-.026 (.040)	-.097* (.027)
Education	.006 (.024)	-.059* (.025)	-.060* (.024)
State Election Salience	.048 (.042)	-.026 (.034)	.063 (.039)
Individual Election Salience	-.009 (.007)	.009 (.011)	.009 (.009)
Constant	.951* (.047)	1.048* (.074)	1.155* (.077)
Observations	735	376	356
Number of groups	22	16	12

Robust standard errors in parentheses

* p<.05, ^X p<.1

This model is estimated using OLS and includes a random intercept that varies by state. All variables except state and individual level election salience are coded with 0 as the minimum and 1 as the maximum.

Chapter 4 Appendix A – Tables containing complete models

Table A.4.1 – Attitude Change and Acceptance

VARIABLES	(1) Attitude Change	(2) Acceptance
Legitimacy	.07 (.16)	.22* (.03)
Specific Support	.37* (.18)	.16* (.03)
Prior Opinion Strength	.41* (.15)	-.31* (.03)
Issue Importance	-.26* (.13)	-.17* (.02)
Anti-Life Sentence Decision	-.33* (.08)	-.11* (.01)
Election Fairness	.11 (.14)	.04 (.04)
Politicization Perceptions	-.10 (.30)	-.11* (.05)
Rule of Law	-.13 (.17)	.03 (.03)
Court Awareness	-.25 (.19)	.01 (.03)
Governor Knowledge	.06 (.14)	-.01 (.03)
Education	.13 (.10)	-.02 (.03)
State Election Salience	-.08 (.06)	-.02 (.02)
Individual Election Salience	.05 (.03)	-.00 (.01)
Constant	.18 (.33)	0.55* (0.06)
Observations	1,450	1,454
Number of groups	50	50

Robust standard errors in parentheses

* p<0.05

This model is estimated using OLS and includes a random intercept coefficient that varies by state. All variables except attitude change, state election salience and individual election salience are coded with 0 as the minimum and 1 as the maximum. The sample for this table contains both the experimental and the control condition.

Table A.4.2 – Acceptance and Four Traditional Categories

VARIABLES	(1) Acceptance	(2) Acceptance
Non-Partisan State	.04 (.03)	.04 (.09)
Retention Election State	.05 ^x (.03)	.10 (.10)
Appointment State	.02 (.02)	-.00 (.09)
Legitimacy	.23* (.05)	.21* (.07)
Specific Support	.12* (.05)	.15 (.11)
Non-Partisan X Legitimacy		-.04 (.09)
Retention X Legitimacy		.03 (.10)
Appointment X Legitimacy		.12 (.08)
Non-Partisan X Specific Support		.03 (.12)
Retention X Specific Support		-.10 (.12)
Appointment X Specific Support		-.08 (.10)
Election Fairness	.08 (.07)	.08 (.07)
Politicization Perceptions	-.12 (.09)	-.11 (.08)
Rule of Law	.09 ^x (.05)	.09 ^x (.05)
Court Awareness	.02 (.05)	.03 (.05)
Prior Opinion Strength	-.31* (.04)	-.31* (.04)
Issue Importance	-.15* (.03)	-.15* (.03)
Anti-Life Sentence Decision	-.14* (.02)	-.14* (.02)
Governor Knowledge	.01 (.03)	.01 (.03)
Education	-.01 (.04)	-.01 (.04)
Constant	0.46*	0.44*

	(0.12)	(0.13)
Observations	758	758
Number of groups	49	49

Robust standard errors in parentheses

* $p < 0.05$, ^x $p < 0.1$

This model is estimated using OLS and includes a random intercept coefficient that varies by state. All variables except are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses.

Table A.4.3 – Election Salience and Determinants of Acceptance

VARIABLES	Court	Court	Legislature
	Acceptance	Acceptance	Acceptance
State Election Salience	.00 (.04)	.09 ^X (.06)	
Individual Election Salience	-.00 (.01)	-.04 (.04)	
Legitimacy	.21* (.05)	.21* (.05)	.10 (.08)
Specific Support	.13* (.05)	.15* (.05)	.28 (.05)
State Salience X Legitimacy		-.26* (.09)	
State Salience X Specific Support		.10 (.09)	
Individual Salience X Legitimacy		.06 (.05)	
Individual Salience X Specific Support		-.00 (.04)	
Election Fairness	.08 (.07)	.08 (.07)	.05 (.10)
Politicization Perceptions	-.12 (.09)	-.10 (.09)	.12 (.10)
Rule of Law	.11* (.05)	.11* (.05)	.06 (.08)
Court Awareness	.02 (.05)	.03 (.05)	-.01 (.09)
Prior Opinion Strength	-.31* (.04)	-.31* (.04)	-.25* (.06)
Issue Importance	-.16* (.03)	-.16* (.04)	-.18* (.06)
Anti-Life Sentence Decision	-.14* (.02)	-.14* (.02)	-.07* (.03)
Governor Knowledge	.00 (.03)	.00 (.03)	.05 (.04)
Education	-.02 (.04)	-.02 (.04)	.02 (.05)
Constant	.49* (.11)	0.47* (.11)	.24* (.12)
Observations	742	742	197
Number of groups	49	49	42

Robust standard errors in parentheses
* $p < 0.05$

This model is estimated using OLS and includes a random intercept coefficient that varies by state. All variables except state and individual-level election salience are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses.

Table A.4.4 – The Experimental Manipulations and the Effectiveness of Legitimacy

VARIABLES	Competitive Election	Retention Election	Appointment System
	Acceptance	Acceptance	Acceptance
Legitimacy	.34* (.05)	.24* (.10)	.18* (.09)
Experimental Manipulation	.07 (.04)	-.04 (.08)	-.02 (.08)
State Election Salience	.26* (.06)		
Manipulation X Legitimacy	-.13* (.06)	-.00 (.12)	.06 (0.11)
Manipulation X Election Salience	-.37* (.13)		
Legitimacy X Election Salience	-.34* (.12)		
Manipulation X Legit. X Election Sal.	.50* (.15)		
Election Fairness	.05 (.05)	.13 ^X (.07)	-.06 (.07)
Rule of Law	-.04 (.06)	.10 ^X (.06)	.06 (.06)
Court Awareness	.03 (.04)	.06 (.08)	-.05 (.07)
Specific Support	.19* (.06)	.08 (.07)	.15 ^X (.08)
Prior Opinion Strength	-.32* (.02)	-.28* (.05)	-.34* (.07)
Issue Importance	-.14* (.03)	-.18* (.05)	-.19* (.05)
Anti-Life Sentence Decision	-.12* (.02)	-.12* (.02)	-.10* (.03)
Education	-.03 (.03)	-.08 (.05)	.08* (.04)
Governor Knowledge	-.00 (.04)	-.06 (.04)	-.02 (.05)
Politicization Perceptions	-.07 (.05)	-.07 (.10)	-.24* (.10)
State Indicator Variables		(Included)	(Included)
Constant	.45* (.07)	.55* (.18)	.64* (.16)

Observations	750	383	359
R-squared		.42	.50
Number of groups	22		

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, ^x p<0.1

All models are estimated using OLS. The model in column 1 includes a random intercept coefficient that varies by state. The models in column 2 and 3 include indicator variables for each state. All variables except state-level election salience are coded with 0 as the minimum and 1 as the maximum. The manipulation is coded 0 for the control condition and 1 for the experimental condition.

Table A.4.5 – Specific Support, Legitimacy and the Competitive Election Manipulation Among the High Election Salience States

VARIABLES	(1) Acceptance	(2) Acceptance
Legitimacy	.23 ^x (.13)	.07 (.16)
Specific Support	-.04 (.14)	-.03 (.12)
Experimental Manipulation	-.21 (.14)	-.48* (.15)
Manipulation X Legitimacy	-.13 (.25)	.16 (.28)
Manipulation X Specific Support	.33 ^o (.20)	.50* (.18)
Election Fairness	.16 (.12)	
Rule of Law	.09 (.12)	
Court Awareness	.03 (.14)	
Prior Opinion Strength	-.25* (.09)	
Issue Importance	-.15 ^x (.09)	
Anti-Life Sentence Decision	-.08 (.05)	
Education	-.19* (.09)	
Governor Knowledge	-.03 (.10)	
Politicization Perceptions	-.16 (.17)	
State Indicator Variables	(Included)	(Included)
Constant	.61* (.18)	0.42* (.09)
Observations	131	134
R-squared	.35	.13

Robust standard errors in parentheses

* p<0.05, ^x p<0.1, ^o p=.10

All models are estimated using OLS and include indicator variables for each state. All variables except state-level election salience are coded with 0 as the minimum and 1 as the maximum. The manipulation is coded 0 for the control condition and 1 for the experimental condition.

Chapter 5 Appendix A – Tables Containing Complete Models

Table A.5.1 – Politicization, Issue Attitudes and Legitimacy Change

VARIABLES	Court	Court	Court
	Legitimacy Change	Legitimacy Change	Legitimacy Change
Politicization Perceptions	-1.41*	2.16	-2.51
	(.66)	(1.42)	(1.94)
Issue Disagreement	-.72*	1.44 ^X	-1.81
	(.34)	(.82)	(1.28)
Issue Importance	-.06	.01	-3.45
	(.26)	(.26)	(2.57)
Issue Disagreement X Politicization		-4.44*	2.90
		(1.57)	(2.72)
Issue Disagreement X Importance			5.47 ^X
			(3.216)
Politicization X Importance			8.40 ^X
			(5.03)
Issue Disagreement X Politicization X Imp.			-12.62*
			(6.32)
Favorability Toward Institution	1.56*	1.53*	1.48*
	(.55)	(.54)	(.55)
Specific Support	-.96 ^X	-1.02 ^X	-.95 ^X
	(.56)	(.56)	(.55)
Rule of Law	.31	.33	.34
	(.38)	(.39)	(.38)
Awareness	.71 ^X	.68 ^X	.69*
	(.37)	(.36)	(.35)
Education	.31	.28	.26
	(.28)	(.27)	(.26)
Election Fairness	.31	.41	.45
	(.34)	(.33)	(.34)
Governor Knowledge	.34	.35	.33
	(.27)	(.27)	(.26)
Anti-Juvenile Life Sentence Decision	-.20 ^X	-.21 ^X	-.23*
	(.12)	(.11)	(.12)
Pre-Decision Legitimacy	-4.36*	-4.31*	-4.22*
	(.57)	(.57)	(.57)
Constant	2.34*	.54	2.48*
	(.90)	(1.18)	(1.05)
Observations	744	744	744
Number of groups	49	49	49

Robust standard errors in parentheses

* $p < 0.05$, ^x $p < 0.1$

All models are estimated using OLS and includes a random intercept that varies by state. All variables except the dependent variable are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses, and all analyses include on the judicial institution condition. The dependent variable is legitimacy change in all models.

Table A.5.2 – Election Salience and Legitimacy Change

VARIABLES	Court	Court	Legislature
	Legitimacy Change	Legitimacy Change	Legitimacy Change
State Election Salience	-.04 (.37)	4.52 ^X (2.43)	
Issue Disagreement	-.68 (.62)	2.36 (1.52)	-2.27 (2.23)
Politicization Perceptions	-2.90* (.97)	3.42 (2.62)	-3.17 (3.77)
Issue Disagreement X Politicization		-6.75* (2.85)	4.70 (3.85)
Politicization X State Salience		-11.16* (4.49)	
Issue Disagreement X State Salience		-6.32* (3.38)	
Issue Disagreement X Polit. X State Sal.		14.69* (5.86)	
Individual Election Salience	.11 (.13)	1.04 (1.04)	
Politicization X Individual Salience		-1.89 (2.17)	
Issue Disagreement X Individual Sal.		-1.23 (1.14)	
Issue Disagreement X Polit. X Ind. Sal.		2.46 (2.40)	
Favorability Toward Institution	1.98* (.87)	2.07* (.85)	3.19** (1.45)
Specific Support	-1.18 (.76)	-1.47* (.73)	-.81 (1.13)
Rule of law	.10 (.84)	.09 (.82)	2.07* (.95)
Awareness	.86 (.64)	.65 (.64)	.58 (1.02)
Education	.96* (.47)	.94* (.44)	-.85 (.57)
Election Fairness	-.33 (.43)	-.24 (.48)	.10 (.97)
Governor Knowledge	.21 (.45)	.11 (.43)	1.67* (.57)
Anti-Juvenile Life Sentence Decision	-.26 (.27)	-.29 (.29)	.63 (.58)
Pre-Decision Legitimacy	-5.12* (.27)	-4.89* (.29)	-2.21 (.58)

	(.86)	(.87)	(1.38)
Constant	3.56*	.95	-1.89
	(1.58)	(2.07)	(3.17)
Observations	269	269	69
Number of groups	45	45	31

Robust standard errors in parentheses

* $p < 0.05$, ^x $p < 0.1$

All models are estimated using OLS and includes a random intercept that varies by state. All variables except the dependent variable state election salience and individual election salience are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses. The models in columns 1 and 2 include only the judicial institution condition, and the model in column 3 includes only the legislature condition. The dependent variable is legitimacy change in all models.

Chapter 5 Appendix B – Testing for Influential Data

I use three different methods to examine whether influential data causes the pattern displayed in Figure 5.2. This figure shows that the predicted level of legitimacy change is positive for those people who very strongly disagree with the decision, consider the issue very important and perceive the court as using a principled decision-making process. This increase was not predicted prior to running the models. I use the three methods of bi-weight regression, Cooks Distance and DFITS to test whether a few influential or outlying data points causing this unpredicted increase. Across all three methods of dealing with influential data points, the pattern barely changes, and the predicted level of legitimacy change is still significantly positive.

One concern is that the commands for these methods in Stata cannot be used with a multi-level model or with sample weighting.³⁷ Because of this, I run the models without using multi-level modeling and without using weights. The results though are almost exactly the same whether I run the full multi-level model with weights or a simple OLS regression with no weights. Column 1 of Appendix A Table 1 shows the results for the full multi-level model with weights. Column 2 of Appendix A Table 1 shows the results for the simple OLS regression model without weights. The results are almost exactly the same. Figure 1 shows the predicted level of legitimacy change for these two models across issue disagreement for those people who consider the issue very important. Each line represents a different point on the politicization perceptions scale. The 5th percentile line represents those people who perceive the court as using a principled decision-making process, and the 95th percentile line represents those people who perceive the court as using a politicized decision-making process. When the line is solid, the predicted level of legitimacy change is significantly different from 0 at $p < .05$. When it is dashed, it is not significantly different from 0. As the figure shows, the pattern for the full multi-level model and the simpler OLS regression are virtually identical. In both for those who either strongly or very strongly disagree with the decision, the predicted level of legitimacy change is significantly positive for those at the 5th percentile of politicization perceptions and significantly negative for those at the 95th percentile of politicization perceptions. Because the results are virtually identical, testing for influential data using simple OLS regression without weights does not pose a major problem.

The first method of bi-weight regression tests for influential and outlying data using an iterative process. It first runs an unweighted model and then down-weights outlying data points. It re-runs the model with the new weights. It runs this process iteratively until the model converges. The other two methods of Cook's Distance and DFITS use a different method. Both measure the effect of deleting one observation on the overall model, but they use different scaling methods. If deleting that observation dramatically changes the results, the data point is considered influential. Both methods have traditional cut-off points over which a data point is considered to be overly influential. For Cooks Distance, the cut-off is $4/N$, and for DFITS the cutoff is $2 * \sqrt{k/N}$.

Column 3 of Table 1 shows the results using bi-weight regression. Column 4 shows the results for a model that constrains the sample to only those people below the traditional cut-off using the DFITS measure. This excludes 28 out of the 744 person sample. Column 5 shows the results for a model that constrains the sample to only those people below the traditional cut-off

³⁷ In R, I found a way to test for influential data using multi-level modeling, but it only tests for whether a second-level observation is influential. This means I could test for whether a state was overly influential but not whether an individual person is overly influential.

using the Cooks Distance measure. This excludes 51 people from the sample. Across all three types of models, the results are very similar.

Figure 2 shows the predicted level of legitimacy change for those people who consider the issue very important. In all three models the predicted level of legitimacy change is significantly positive at $p < .05$ for those people perceive the court as using a principled decision-making process and who very strongly disagree with the decision. For those people who perceive the court as using politicized decision-making process, the predicted level of legitimacy change is significantly negative for those who strongly or very strongly disagree the decision. The only important difference among the three graphs is that the increase is significantly positive for both those who strongly and very strongly disagree with the decision using the Cook's Distance and Robust Regression methods. Using DFITS, the increase is significantly positive only among those who very strongly disagree with the decision.

The consistency of the results across all three methods for dealing with influential and outlying data shows that the pattern found in Figure 5.2 does not result from a few influential data points. Instead, it is a robust finding that requires an explanation. Positivity Theory (Gibson et al. 2003b, 2009) provides a possible reason for why a displeasing decision could lead to an increase in legitimacy under these circumstances. That theory states that pleasing decisions increase the U.S. Supreme Court's legitimacy, but because of the shirking mechanism displeasing decisions do not cause a decrease in legitimacy. This evidence suggests that perhaps the increase in legitimacy can also result from a displeasing decision, as long as the institution is perceived as using a principled decision-making process.

Table B.5.1 – Legitimacy Change and Influential Data

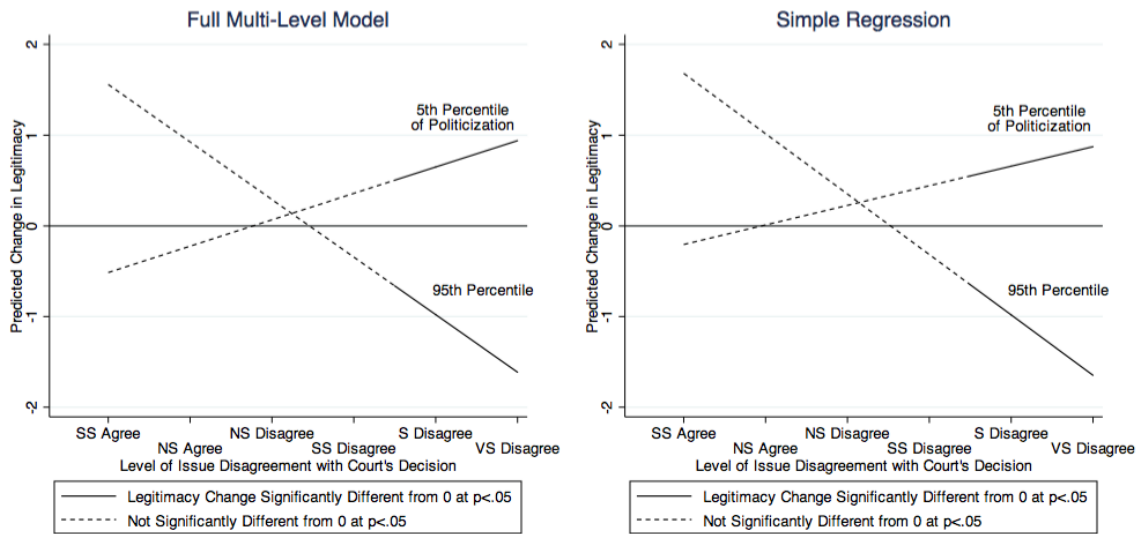
VARIABLES	Multi-level Model with Weighting	Simple OLS regression	Robust regression	Dfits	Cooks D
	Legitimacy Change	Legitimacy Change	Legitimacy Change	Legitimacy Change	Legitimacy Change
Issue Disagreement	-1.81 (1.28)	-1.48 (1.47)	-1.41 (1.36)	-1.93 (1.36)	-1.50 (1.29)
Issue Importance	-3.45 (2.57)	-2.47 (2.17)	-2.66 (2.01)	-4.99* (2.25)	-3.52 (2.33)
Politicization Perceptions	-2.51 (1.94)	-1.26 (2.28)	-1.86 (2.11)	-2.82 (2.13)	-2.36 (2.03)
Disagreement X Imp.	5.47 ^X (3.22)	4.53 ^X (2.57)	4.51 ^X (2.37)	7.03* (2.64)	4.90 ^X (2.69)
Disagreement X Polit.	2.90 (2.72)	1.91 (2.92)	1.83 (2.69)	3.43 (2.71)	2.14 (2.60)
Importance X Polit.	8.40 ^X (5.03)	6.74 (4.46)	6.70 (4.12)	11.82* (4.55)	9.36* (4.74)
Disagree.X Polit. X Imp.	-12.62* (6.32)	-11.17* (5.15)	-10.50* (4.76)	-16.98* (5.23)	-12.64* (5.40)
Rule of Law	.34 (.38)	.08 (.29)	-.04 (.27)	-.08 (.27)	.15 (.25)
Awareness	.69* (.35)	.70* (.34)	.52 ^X (.31)	.63* (.31)	.55 ^X (.28)
Specific Support	-.95 ^X (.55)	-.57 (.39)	-.38 (.36)	-.53 (.35)	-.51 (.33)
Education	.26 (.26)	.40 ^X (.23)	.27 (.21)	.29 (.21)	.29 (.19)
Favorability	.01* (.01)	.01* (.00)	.01* (.00)	.01* (.00)	.01* (.00)
Election Fairness	.45 (.34)	.17 (.33)	-.09 (.30)	.36 (.30)	.07 (.28)
Governor Knowledge	.33 (.26)	.20 (.22)	.17 (.20)	.15 (.20)	.06 (.18)
Liberal Decision	-.23* (.12)	-.09 (.13)	-.04 (.12)	-.16 (.12)	-.10 (.11)
Pre-Decision Legitimacy	-4.22* (.57)	-4.09* (.38)	-3.63* (.35)	-3.82* (0.35)	-3.91* (.33)
Constant	2.46* (1.05)	2.07 (1.28)	2.60* (1.18)	2.67* (1.20)	2.94* (1.11)
Observations	744	744	744	716	693
R-squared		.19	.17	0.21	0.21

Number of groups 49

Robust standard errors in parentheses

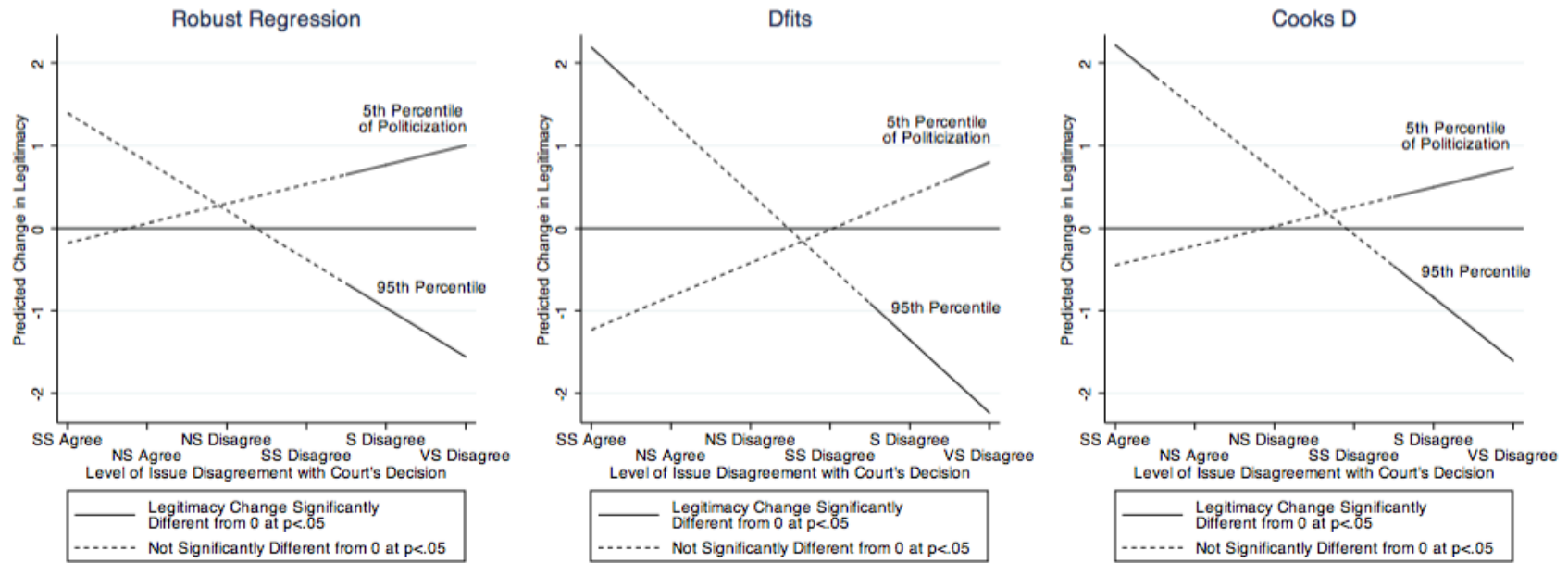
* $p < 0.05$, ^x $p < 0.1$

Figure B.5.1 – Legitimacy Change and Influential Data 1



The predicted change in legitimacy is displayed from the 5th to 95th percentile of issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. Each line represents the predicted value of legitimacy change at different percentiles of politicization perceptions. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$.

Figure B.5.2 – Legitimacy Change and Influential Data 2



The predicted change in legitimacy is displayed from the 5th to 95th percentile of issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. Each line represents the predicted value of legitimacy change at different percentiles of politicization perceptions. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$. All predicted values are calculated while holding importance at its highest level.

Chapter 5 Appendix C – Results using Four Traditional Categories of Judicial Selection Method

The models in Table 1 examine the effect of the four traditional categories of judicial selection method on the resistance of legitimacy to a displeasing decision. Each model includes a random intercept that varies by state and the same set of control variables as the previous models. The sample only includes those people above the midpoint of perceived issue importance. The model in column 1 of Table 1 includes a set of indicator variables to examine the average effect of each category of selection method on legitimacy change. The excluded category is partisan elections. Each coefficient is insignificant and the differences between any two categories is never significant at $p < .05$. As with state election salience, the four traditional categories of judicial selection method have no average effect on legitimacy change.

The second column includes a separate triple interaction with politicization perceptions and issue disagreement for each category variable. The interaction between politicization and issue disagreement should be negative among those categories associated with an appointment system and zero among those categories associated with elections. The pattern of results reveals that the interaction between politicization and issue disagreement is small and insignificant for both partisan and non-partisan states, and large and significant at $p < .05$ for the retention election and appointment states.

To simplify the analysis, I construct a variable that is 1 for both partisan and non-partisan states, and 0 for both retention election and appointment states. Column 3 of Table 1 shows the model that includes a triple interaction between the competitive election indicator (1=Partisan/Non-Partisan, 0 = Retention/Appointment), politicization perceptions and issue disagreement. This triple interaction is significant at $p < .05$. Figure 1 displays the predicted level of legitimacy change across issue disagreement. Each line represents a different level of politicization perceptions.

The results for the appointment/retention election states are very similar to those from a court highly associated with appointment systems using the election salience measure. At the 95th percentile of politicization, the predicted level of legitimacy is significantly negative for those who strongly or very strongly disagree with the decision. For those who very strongly disagree with the decision, the predicted level of legitimacy change is -1.82. At the 5th percentile of politicization, the predicted level of legitimacy is significantly positive for those who strongly or very strongly disagree with the decision. For those who very strongly disagree with the decision, the predicted level of legitimacy change is 1.72. The only difference from the election salience results is that when the court is perceived as principled (5th percentile of politicization) and a person agrees with the decision legitimacy significantly ($p < .05$) decreases. This finding is in the opposite direction as would be expected. I can come up with no plausible reason why legitimacy would decrease for people who agree with the decision and perceive the court as using a principled decision-making process.

The results for the competitive election states somewhat mirror the results for a court highly associated with elections using the election salience measure, but they diverge in a few crucial ways. The direct effect of politicization perceptions is still significantly negative for these states. Additionally, the predicted level of legitimacy change is significantly negative ($p < .05$) when someone either somewhat strongly, strongly or very strongly disagrees with the decision. For those who very strongly disagree with the decision, the predicted level of legitimacy change is -1.27.

I expect the reason why the results for the competitive election states do not completely match those for a court highly associated with elections (95th percentile of election salience) is the wide variation in election salience within the partisan and non-partisan category. Only a few competitive election states are highly associated with elections and some are associated with appointment systems. Because this broad category includes both courts associated with appointment systems and courts associated with elections, the results will be mixed.

Table C.5.1– Four Traditional Categories of Judicial Selection Method and Legitimacy Change

VARIABLES	Court	Court	Court
	Legitimacy Change	Legitimacy Change	Legitimacy Change
Issue Disagreement	-.63 (.59)	.92 (1.23)	7.60* (1.20)
Politicization Perceptions	-2.72* (.96)	-.15 (1.61)	10.48* (1.81)
Issue Disagreement X Politicization		-2.69 (2.06)	-15.80* (2.30)
Non-Partisan Election State Indicator	.12 (.36)	3.43* (1.67)	
Non-Partisan X Issue Disagreement		-4.32* (2.15)	
Non-Partisan X Politicization		-1.90 (3.61)	
Non-Partisan X Issue Disagreement X Polit.		3.33 (4.78)	
Retention Election State Indicator	.44 (.35)	-5.42* (1.31)	
Retention X Issue Disagreement		6.72* (1.79)	
Retention X Politicization		11.58* (1.86)	
Retention X Issue Disagreement X Polit.		-12.46* (2.67)	
Appointment State Indicator	-.07 (.43)	-2.62 (3.34)	
Appointment X Issue Disagreement		3.92 (3.81)	
Appointment X Politicization		6.36 (5.33)	
Appointment X Issue Disagreement X Polit.		-9.09 (6.21)	
Competitive Election State Indicator			7.88* (1.58)
Comp. Election X Issue Disagreement			-9.96* (1.83)
Comp. Election X Politicization			-13.70* (2.48)
Comp. Election X Issue Disagreement X Politicization			16.86*

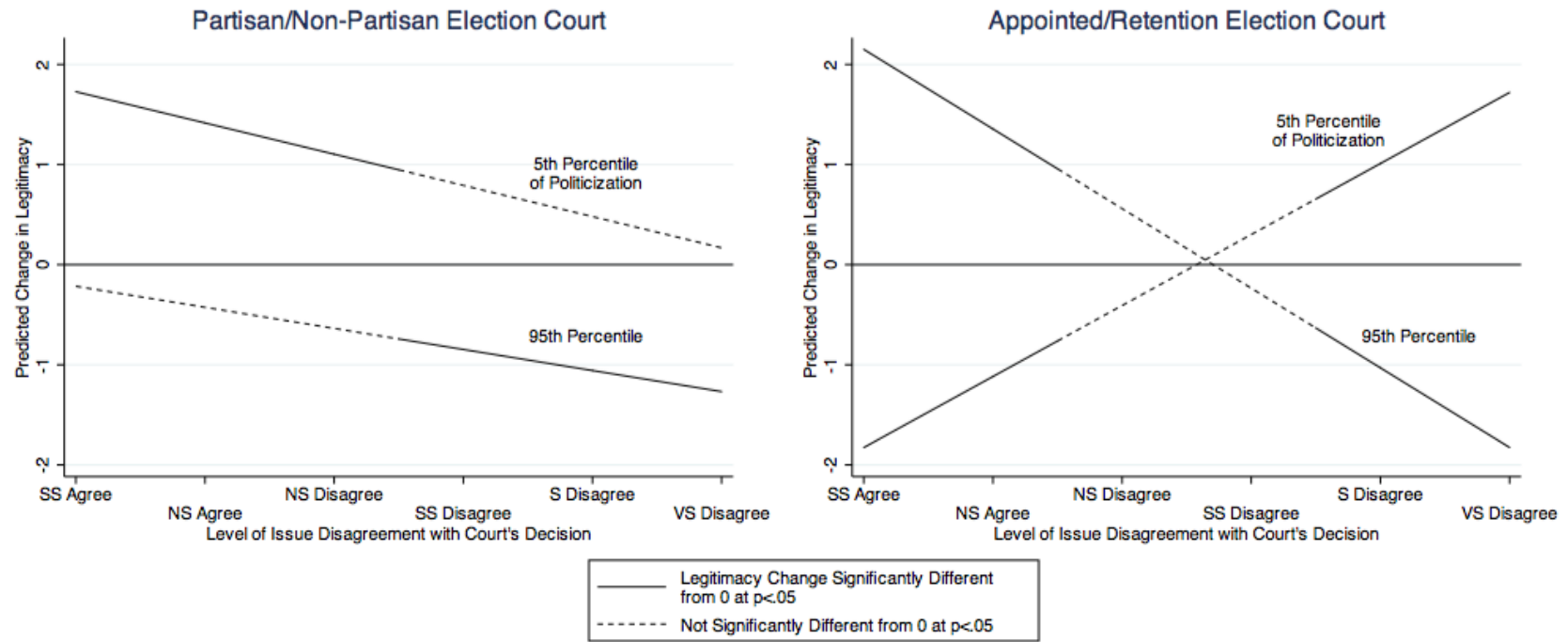
			(3.18)
Rule of Law	.24 (.77)	.47 (.70)	.23 (.74)
Awareness	0.73 (.68)	.53 (.67)	.46 (.62)
Specific Support	-1.24 ^x (.71)	-1.31* (.58)	-1.35* (.61)
Education	1.05* (.45)	.92* (.40)	.79* (.40)
Election Fairness	-.35 (.41)	-.07 (.46)	-.31 (.47)
Governor Knowledge	.09 (.41)	.012 (.43)	.15 (.43)
Anti-Juvenile Life Sentence Decision	-.24 (.24)	-.29 (.25)	-.22 (.24)
Favorability Toward Institution	2.07* (.80)	1.74** (.76)	1.95* (.82)
Pre-Decision Legitimacy	-5.01* (.82)	-4.43* (.85)	-4.51* (.88)
Constant	3.26* (1.63)	1.56 (1.72)	-3.21 ^x (1.86)
Observations	277	277	277
Number of groups	45	45	45

Robust standard errors in parentheses

* p<0.05, ^x p<0.1

All models are estimated using OLS and includes a random intercept that varies by state. All variables except the dependent variable are coded with 0 as the minimum and 1 as the maximum. Only the control condition is included in these analyses. All models include only the judicial institution condition. The dependent variable is legitimacy change in all model.

Figure C.5.1 – Competitive Election States, Appointment/Retention Election States and Legitimacy Change



The predicted change in legitimacy is displayed across issue disagreement. For the issue disagreement scale, NS = Not Strongly At All, SS = Somewhat Strongly, S = Strongly and VS = Very Strongly. Each line represents the predicted value of legitimacy change at different percentiles of politicization perceptions. When the line is solid, the predicted legitimacy change is significantly different from 0 at $p < .05$. When the line is dotted, the predicted legitimacy change is not significantly different from 0 at $p < .05$. The graph on the left shows the predicted values for partisan and non-partisan election states. The graph on the right shows the predicted values for retention election and appointment states. These figures were constructed from the model in column 3 of Table 1 – Appendix B.

Chapter 6 Appendix A – Text of Articles and Question Wording

Text of Unprincipled Condition

Political activists from both sides of the aisle worry that the some of the current U.S. Supreme Court justices will be biased when ruling on the constitutionality of the Obama health care plan. The health care plan is working its way through the federal court system, and the U.S. Supreme Court is poised to rule on whether it is constitutional very soon.

Most recently, some court scholars voiced their concern over Justice Clarence Thomas and the involvement of this wife in the tea party movement. His wife is the founder of a group called Liberty Central that was instrumental in organizing the Tea Party protests that swept across the country. She even wrote an article suggesting that the health care legislation was unconstitutional and posted it on the web site of that group.

To make matters worse, Thomas failed to report these activities on the income disclosure forms he is required to file as member of the Supreme Court. On these forms he is supposed to disclose the income sources for both himself and his spouse. His wife has long worked at conservative think tanks, conservative activists groups, and even as an aide to a Republican member of Congress. He only included his wife's income from her partisan political activity on these forms after a government watchdog group highlighted his failure to disclose it.

Thomas responded to these criticisms by lashing out at his political enemies during a speech to the Federalist Society, a conservative legal society. He said that him and his wife "believe in the same thing" and he will stand by her. During the speech, he said he is worried about the liberal direction the country has taken, and his job on the court is to fend off threats to the American way of life.

This is not the first time that Thomas has given a speech to a partisan audience. He spoke at a gathering of major conservative donors in 2008 sponsored by the billionaire industrialist Koch brothers who spend millions every year lobbying for conservative political causes. These activities leave many watchers of the court wondering whether Thomas can be impartial with his rulings on the upcoming health care bill.

However, the worries are not limited to the conservative judges on the court. The activities of the liberal judges also cast doubt on their ability to be impartial when dealing with cases. During the confirmation hearings for the newest Supreme Court Justice Elena Kagan, it was revealed that during her time as part of the Obama administration she had helped to plan the administration's legal defense of the health care bill. Now that she has been put on the court she will be ruling on whether the legal defense she helped to create is correct or not.

Kagan refuses to recuse herself from the vote though. One possible reason for this is that she could be the deciding vote in favor of upholding the health care bill. The court is split between four conservative judges and four liberal judges. The conservative judges are almost certain to vote against the health care bill while the four liberal judges are almost certain to vote for it. If the health care bill has any chance of being upheld as constitutional, Kagan, as one of the four liberals on the court, must vote for it. Otherwise it is almost certain to be defeated.

These two instances of judges becoming involved in partisan politics are just two of the many indications that the U.S. Supreme Court has become just as politicized as Congress or the Presidency. While it is supposed to be the institution most shielded from partisan bickering, the polarized politics of the modern era has made its way even to the Supreme Court. Whether it is Justice Sonia Sotomeyer saying that judges don't interpret the law but instead "judges make law"

or Justice Antonin Scalia attacking homosexuals in speeches to anti-gay rights groups while ruling against homosexual rights in his Supreme Court decisions, the one constant is that this Supreme Court is just another arena in the constant political bickering that is corrupting the American political system.

Text of Neutral Condition

High fructose corn syrup is found throughout the American diet, in everything from sugary foods like soda and cookies to savory products like tomato sauce and salad dressing. That's precisely the problem, say critics who blame the vast quantities we consume for the nation's soaring rates of obesity and diabetes.

But not everyone is convinced. Last June, the Corn Refiners Association launched an ad campaign telling the other side of the story — namely, that HFCS is made from corn and has the same calories as sugar. The mixed messages have left consumers looking for answers. Prevention investigated, and we address the most common claims about HFCS.

Proponents say: Table sugar and HFCS have the same number of calories.

The verdict: "Gram for gram, table sugar and high fructose corn syrup are equal in calories," says Tanya Zuckerbrot, RD, a New York City-based nutritionist. They are also equally sweet. And both consist of two simple sugars — fructose and glucose — in roughly the same proportions (though the two sugars are merely blended together in HFCS, versus chemically bonded in sugar). Your body breaks down both products in virtually the same way.

Still, we know much less about the long-term effects of HFCS than about those of sugar. HFCS was invented in the 1960s and has been used extensively in consumer products since only the late 1970s. It may be too soon to say that HFCS and sugar (which has been consumed safely for thousands of years) are the same.

Proponents say: HFCS is natural.

The verdict: Natural is relative, so think of it this way: HFCS would not exist without the aid of humans. (Of course, neither would table sugar.) "You don't just squeeze it out of a kernel of corn," explains Jacobson. The sweetener is made from cornstarch via a process that alters corn's naturally occurring starch molecules.

Proponents say: HFCS is responsible for the rise in obesity in our country.

The verdict: Manufacturers started using HFCS in the late '70s, right before America's collective waistline began to expand. Researchers have speculated that the relationship is more than a coincidence. However, a December 2008 supplement to the American Journal of Clinical Nutrition found no scientific support for the hypothesis that HFCS is causing obesity in the United States. Some experts make an indirect case: HFCS, once much cheaper than sugar, cut the cost of sweet, calorie-dense foods, which fueled our sweet tooth — causing weight gain in the process.

Proponents say: HFCS contributes to diabetes risk.

The verdict: "This notion that high fructose corn syrup is to blame for diabetes isn't exactly accurate," says Zuckerbrot. It probably gained traction alongside the obesity rumor. But we do know that excess calories — from any source — lead to weight gain, which plays a role in diabetes.

Interestingly, research suggests that a diet high in fructose (the sugar found naturally in fruit) may lead to leptin resistance, a hallmark of diabetes — and thanks to the ubiquity of HFCS, we are getting more fructose in our diets than ever before. Scientists are continuing to explore the possible link.

One clue that there's more to learn: In 2007, researchers at Rutgers University found that sodas sweetened with HFCS have high levels of compounds called reactive carbonyls, which are found in excess in the blood of people with diabetes and may contribute to tissue damage. "This brings up some interesting concerns, but we don't want to hang our hat on the results of one study," says American Dietetic Association spokesperson Lona Sandon, RD. Bottom line: More research needs to be done.

Proponents say: The FDA says that HFCS is safe to consume, so it must be.

The verdict: The FDA has ruled twice that HFCS is "safe" to consume. But just because something is safe does not mean it is healthy. Limiting HFCS (and other added sweeteners) does have one well-understood benefit: It will help you lose weight. And that will help prevent disease.

Text of Liberal Court Decisions

Supreme Court declares bill outlawing lying about military medals unconstitutional

The U.S. Supreme Court struck down as unconstitutional the Stolen Valor Act that makes it a crime to lie about being awarded a military decoration or medal, saying it is a violation of free speech.

Xavier Alvarez challenged the act after he charged with a crime for stating that he had received a Congressional Medal of Honor and had been wounded many times during combat. However, Alvarez had never been a member of the United States armed forces.

Alvarez is an elected member of the Board of Directors of the Three Valley's Municipal Water District in Pomona, California and made the factually incorrect statements about his military service during a public water board meeting. He received a sentence of 3 years probation and a \$5000 fine.

Alvarez challenged the act as a violation of free speech. The case revolved around whether factually incorrect statements are protected speech under the free speech clause of the first amendment.

The Supreme Court said these factually incorrect statements must be protected by the first amendment. The government should not be able to punish someone for making incorrect factual statements because this turns the government into the "truth police". People will always make untrue statements about themselves and it is not up to the government to determine which type of untrue statement is worthy of punishment and which type is not.

The Supreme Court rejected the arguments from of government. The Supreme Court ruled in the past that some forms of speech like libel and obscenity are not protected by free speech, and factually incorrect statements should be considered similar to libel. However, the court said that libel is different from the current situation because libel is factually incorrect statements about another person while the current case involves factually incorrect statements a person made about himself.

The government's final argument was that even if this speech is protected by the first amendment, the government's interest in ensuring the integrity of its military awards system should outweigh Alvarez's free speech rights. The government asserted that the military awards system are an essential part of the military and help to increase the morale of the armed forces. The court rejected this argument saying that the government interest in ensuring the integrity of the awards system does not outweigh Alvarez's free speech rights.

Supreme Court says affirmative action program constitutional

The U.S. Supreme Court upheld an affirmation action plan at the University of Texas at Austin as appropriate under the equal protection clause of the constitution. The decision

reaffirms the ability of universities to use racial preferences in a limited manner during their admissions process.

The affirmative action plan at the University of Texas at Austin was recently changed after a 2003 U.S. Supreme Court decision which said that race can only be a factor in university admission plans if a non-raced based plan cannot be used to ensure a crucial mass of diversity at the school.

In response to this decision, the university created a plan that would instantly allow the top-ten percent of any high school class admission into the university. This helped to increase the representation of racial minorities at the university because of the racial segregation in housing and high school education.

After implementing this plan the representation of racial minorities increased dramatically. About 80 percent of the spots in the university were filled using this top-ten percent plan. The remaining 20 percent were filled using the traditional method of choosing from a pool of applicants. The university did not feel that the top-ten percent plan provided a crucial mass of minority students and used racial preferences when deciding how to fill the remaining 20 percent of the slots. These racial preferences gave blacks and Hispanics an advantage over whites in the admissions process.

A white high-senior Abigail Fisher, who was in the top 12 percent of her class, was denied admission into the university and filed a lawsuit saying that the racial preferences for filling the remaining 20 percent of the slots was a violation of the Supreme Court's 2003 ruling. She argued that the top-ten percent plan was a non-race based method for providing a crucial mass of diversity at the school and the racial preferences for filling the remaining 20 percent is unneeded and unconstitutional.

The Supreme Court declared that the university can still use these additional racial preferences because the top-ten percent plan did not provide a crucial mass of diversity within some programs. Racial minorities were still underrepresented in programs like math and science and the racial preferences used to fill the remaining 20 percent of the spots were only used to provide a crucial mass of diversity within these specific programs.

Fisher argued that the court should only consider the racial diversity within the whole student body. However, the court rejected that argument saying that even if the top-percent program provided diversity across the student body, the university can still use targeted racial preferences to provide a crucial mass of diversity within specific programs.

Supreme Court limits ability of jails to strip-search arrested individuals

The Supreme Court ruled that jails must have a "reasonable suspicion" that someone is attempting to smuggle an object into a jail before they can strip search the inmate. The court case called *Florence v Board of Chosen Freeholders* involves Albert Florence who was arrested for failing to pay a fine and strip-searched twice before being released without ever being convicted of a crime.

Florence was stopped for speeding in Burlington County, New Jersey. He had an outstanding arrest warrant because he failed to pay a fine. However, the arrest warrant was incorrect because Florence had already paid the fine and had court records in his car showing that he had already paid the fine.

The police officer did not accept the document and arrested him. The Burlington County Jail has a policy of strip-searching all inmates brought to the jail no matter how minor the crime. Even someone brought in for a minor crime like public intoxication or not paying a fine will always be strip-searched.

Florence was held in jail for six days and strip-searched twice as he tried to obtain the proper documents showing he had already paid the fine. Once he was able to obtain the proper documents he was brought before a judge who said he was “appalled” and ordered Florence’s immediate release.

Florence argued that jails should only be able to strip-search an inmate if they have “reasonable suspicion” that the person is attempting to bring illegal objects into the jail. His lawyer stated that the jail can ensure the safety of its inmates through less intrusive means like a metal detector.

Burlington County countered that strip-searches are required to ensure the safety of its jails. Inmates in jails have fewer rights than other people and thus the fourth-amendments requirement of a reasonable suspicion before searching someone is not applicable in this situation. Even if inmates do have some fourth-amendment rights, the need for security in jails outweighs any rights that an inmate may have.

The Supreme Court agreed with Florence that inmates who have been convicted of no crime and only arrested for a minor offense still have some fourth-amendment rights. Before someone arrested for a minor crime can be strip-searched, police and corrected officers must have a “reasonable suspicion” that a person is attempting to smuggle illegal objects into the jail.

Text of Conservative Court Decisions

Supreme Court upholds bill outlawing lying about military medals

The U.S. Supreme Court upheld as constitutional the Stolen Valor Act that makes it a crime to lie about being awarded a military decoration or medal, saying it is not a violation of free speech.

Xavier Alvarez challenged the act after he charged with a crime for stating that he had received a Congressional Medal of Honor and had been wounded many times during combat. However, Alvarez had never been a member of the United States Armed Forces.

Alvarez is an elected member of the Board of Directors of the Three Valley's Municipal Water District in Pomona, California and made the factually incorrect statements about his military service during a public water board meeting. He received a sentence of 3 years probation and a \$5000 fine.

Alvarez challenged the act as a violation of free speech. The case revolved around whether factually incorrect statements are protected speech under the free speech clause of the first amendment.

The Supreme Court has ruled in the past that some forms of speech like libel and obscenity are not protected under the first amendment. Alvarez argued that libel is different from the current situation because libel is factually incorrect statements about another person while the current situation is a person making factually incorrect statements about himself. The court disagreed with this distinction and said that all factually incorrect statements are not protected by the first amendment.

Alvarez also argued that the government should not become the "truth police". People always make untrue statements about themselves and it is not up to the government to determine which type of untrue statement is worthy of punishment and which type is not. The court said this is not applicable in this situation because factually incorrect statements are not protected by the first amendment.

Even if this speech was protected by the first amendment, the court said the government interest in ensuring the integrity of its military awards system outweigh any free speech rights Alvarez may have. These awards are an essential part of the military and help to increase the morale of the armed forces.

Supreme Court says affirmative action program unconstitutional

The U.S. Supreme Court declared an affirmative action plan at the University of Texas at Austin a violation of the equal protection clause of the constitution. The decision calls into question the ability of any university to use racial preferences in their admissions process.

The affirmative action plan at the University of Texas at Austin was recently changed after a 2003 U.S. Supreme Court decision which said that race can only be a factor in university admission plans if a non-raced based plan cannot be used to ensure a crucial mass of diversity at the school.

In response to this decision, the university created a plan that would instantly allow the top-ten percent of any high school class admission into the university. This helped to increase the representation of racial minorities at the university because of the racial segregation in housing and high school education.

After implementing this plan the representation of racial minorities increased dramatically. About 80 percent of the spots in the university were filled using this top-ten percent plan. The remaining 20 percent were filled using the traditional method of choosing from a pool of applicants. The university did not feel that the top-ten percent plan provided a crucial mass of minority students and used racial preferences when deciding how to fill the remaining 20 percent of the slots. These racial preferences gave blacks and Hispanics an advantage over whites in the admissions process.

A white high-senior Abigail Fisher, who was in the top 12 percent of her class, was denied admission into the university and filed a lawsuit saying that the racial preferences for filling the remaining 20 percent of the slots was a violation of the Supreme Court's 2003 ruling. She argued that the top-ten percent plan was a non-race based method for providing a crucial mass of diversity at the school and the racial preferences for filling the remaining 20 percent is unneeded and unconstitutional.

The Supreme Court declared that the top-ten percent plan used by the university provided a crucial mass of racial diversity and the use of the additional racial preferences when filling the remaining slots violated its 2003 decision. Since racial diversity can be achieved using a non-race based plan, explicitly taking race into account cannot be justified in this instance.

The court rejected the arguments of the university officials who said that the additional racial preferences were required to provide racial diversity within certain schools and programs. The top ten percent program provides general diversity across the university but within certain programs like science and math minorities are still underrepresented. The additional racial preferences when filling the remaining 20 percent were only intended to provide a crucial mass of racial diversity within these few remaining programs where racial minorities are substantially underrepresented.

Supreme Court says jails can strip search anyone arrested

The Supreme Court ruled that jails have an unlimited right to strip search anyone arrested and brought to jail, no matter how minor the crime. The court case called *Florence v Board of Chosen Freeholders* involves Albert Florence who was arrested for failing to pay a fine and strip-searched twice before being released without ever being convicted of a crime.

Florence was stopped for speeding in Burlington County, New Jersey. He had an outstanding arrest warrant because he failed to pay a fine. However, the arrest warrant was incorrect because Florence had already paid the fine and had court records in his car showing that he had already paid it.

The police officer did not accept the document and arrested him. The Burlington County Jail has a policy of strip-searching all inmates brought to the jail no matter how minor the crime. Even someone brought in for a minor crime like public intoxication or not paying a fine will always be strip-searched.

Florence was held in jail for six days and strip-searched twice as he tried to obtain the proper documents showing he had already paid the fine. Once he was able to obtain the proper documents he was brought before a judge who said he was “appalled” and ordered Florence’s immediate release.

Florence argued that jails should only be able to strip-search an inmate if they have “reasonable suspicion” that the person is attempting to bring illegal objects into the jail. His lawyer stated that the jail can ensure the safety of its inmates through less intrusive means like a metal detector.

Burlington County countered that strip-searches are required to ensure the safety of its jails. Inmates in jails have fewer rights than other people and thus the fourth-amendments requirement of having a reasonable suspicion before searching someone is not applicable in this situation. Even if inmates do have some fourth-amendment rights, the need for security in jails outweighs any rights that an inmate may have.

The Supreme Court agreed with Burlington County that the need for security in jails outweighs the fourth-amendment rights of an arrested inmate. If jails are not free to strip-search all inmates who enter jail – even those arrested for only very minor crimes and not yet convicted of a crime – the safety of the inmate and guard population inside jails would be severely undermined.

Question wording

Legitimacy and decision-making perceptions

For the following items a statement was presented on the screen, and the subjects were asked “Do you agree or disagree with that statement?”. Their answer options were strongly agree, agree, neither agree nor disagree, disagree, and strongly disagree.

Legitimacy

- 1 - If the Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.
- 2 – The right of the Supreme Court to decide certain types of controversial issues should be reduced.
- 3 – The Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision.
- 4 – The Supreme Court ought to be made less independent.

Decision-Making Perceptions

- 1 – The members of the U.S. Supreme Court usually follow a firm set of principles when making decisions.
- 2 – Supreme Court justices base their decisions on the law, not their personal political opinions.
- 3 – U.S. Supreme Court justices are really just politicians in robes.
- 4 – The personal political opinions of Supreme Court Justices have too much influence on how they make decisions.

Support for the Rule of Law

- 1 - It is not necessary to obey a law you consider unjust.
- 2 - Sometimes it might be better to ignore the law and solve problems immediately rather than wait for a legal solution.
- 3 - The government should have some ability to bend the law in order to solve pressing social and political problems.
- 4 - It is not necessary to obey the laws of a government that I did not vote for.

Acceptance Items

1 – Do you think that the court’s decision in this case should be accepted and obeyed by the mass public even if some people may disagree with it?

- Yes
- No

Follow-up question

-How strongly do you feel about this?

- Extremely strongly
- Strongly
- A little strongly
- Not strongly at all

2- Even if they may disagree with the decision, should this decision be implemented as public policy by government officials all across the country?

- Yes
- No

Follow-up question

-How strongly do you feel about this?

- Extremely strongly
- Strongly
- A little strongly
- Not strongly at all

3 –Would you support or oppose efforts to overturn the court’s decision in this case?

- Support
- Neither support nor oppose
- Oppose

Follow-up Question

-How strongly do you feel about this?

- Extremely strongly
- Strongly
- A little strongly
- Not strongly at all

Knowledge of the Court

1 - Some judges in the US are elected; others are appointed to the bench. Do you happen to know if the justices of the US Supreme Court are elected or appointed to the bench?

- Appointed to the bench
- Elected
- I don't know the answer

2 - Some judges in the US serve for a set number of years; others serve a life term. Do you happen to know whether the justices of the US Supreme Court serve for a set number of years or whether they serve a life term?

- A set number of years
- Life term
- I don't know the answer

3 - Can a decision of the Supreme Court be overturned by a constitutional amendment?

- Yes
- No
- I don't know the answer

4 - After a case is appealed to the Supreme Court, the Court will not hear the case unless a writ of certiorari is issued by the Court. What is the minimum number of justices that must agree to hear a case before a writ of certiorari is issued?

- All of the justices
- A majority
- Four
- One
- I don't know the answer.

5 - As you know, the U.S. Supreme Court issues written opinions along with its decisions in most major cases it decides. I wonder if you know about how many decisions with opinions the Court issues each year. Would you say it is:

- Less than one hundred opinions
- Around five hundred opinions
- A thousand opinions
- I don't know the answer.

6 - When the U.S. Supreme Court decides a case, would you say that:

- The decision can be appealed to another court
- Congress can review the decision to see if it should become law.
- The decision is final and cannot be further reviewed
- I don't know the answer.

Ideological Self-Placement

1 - Many people think of politics in terms of liberal or conservative. Do you consider yourself to be conservative, moderate or liberal?

- Very conservative
- Conservative
- Moderate
- Liberal
- Very Liberal

Chapter 6 Appendix B – Demographics and Univariate Frequencies

Table B.6.1 - Demographics of Sample

Ideology	Percentage of Sample
Very Conservative	0
Conservative	18
Moderate	40
Liberal	37
Very Liberal	4
<hr/>	
Partisanship	
<hr/>	
Democrat	50
Independent	32
Republican	17
<hr/>	
Race	
<hr/>	
White	43
Black	7
Hispanic	11
Asian	30
Other	9
<hr/>	
Gender	
<hr/>	
Male	54
Female	46
<hr/>	

Table B.6.2 -Distribution of Pre-decision Announcement Legitimacy

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
Do away with Court	1	16	23	48	12
Reduce controversial issues	1	22	29	42	6
Say what Constitution means	6	47	22	23	2
Made less independent	2	17	30	41	11

Table B.6.3 -Distribution of Post-decision Announcement Legitimacy

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
Do away with Court	2	16	16	49	17
Reduce controversial issues	3	27	18	45	6
Say what Constitution means	6	57	16	18	3
Made less independent	3	20	24	48	5

Each cell is the percentage of subjects who indicated the respective option for that item.

Table B.6.4 - Distribution of Decision-Making Perception Items

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
Fair decision-making	7	47	27	21	1
Follow firm set of principles	6	59	20	13	1
Judges are politicians in robes	6	26	33	33	3
Political opinions too much influence	9	42	30	19	5

Each cell is the percentage of subjects who indicated the respective option for that item.

Table B.6.1 - Distribution of Acceptance items

Should be Accepted by Mass Public	<i>Fisher</i>	<i>Florence</i>	<i>Alvarez</i>
Yes	75	82	77
No	25	18	23
<hr/>			
Implemented as Public Policy			
Yes	58	72	76
No	42	28	24
<hr/>			
Overturn with Constitutional Amendment			
Support	30	22	23
Neither support nor oppose	43	36	41
Oppose	27	42	37

Each cell is the percentage of subjects who indicated the respective option for that item in that particular case.

Chapter 6 Appendix C – Discussion of the external validity of findings and the student sample

The use of a student sample troubles some because of concerns about the external validity of the results, and whether the results hold across the general population. Druckman and Kam (2011) discuss the use of student samples. They argue and use simulations to show that the only time student samples hurt the external validity of results is when some unmodeled moderating variable on which the student sample differs dramatically from the general population changes the effect size of the experimental manipulation. If this is the case, it is possible that the average effect across the general population is different from the average effect estimated from the student sample.

The main effects in this study are both interactions. In one interaction, an increasing perception of politicized decision-making decreases the marginal effect of legitimacy on acceptance. The second interaction is that an increasing perception of politicized decision-making increases the marginal effect of a displeasing decision on changes in legitimacy. According to the argument advanced in Druckman et al. (2011), the results presented in this study would not generalize across the general population if some unmodeled variable moderates these two interactions. Student samples generally have weaker attitudes than the general population, (Sears 1986) and this variable could potentially moderate the impact of the experimental manipulation. However, the evidence from this study suggests that the legitimacy attitude of the student sample, coming into the experiment, acts like a strong attitude. In the control condition, where the attitude strength of the subjects should be unaffected by the experiment, the strength of the subject's legitimacy attitude was high. The two major properties of a strong attitude are that it strongly affects other judgments and that it is resistant to change (Petty et al. 1995), and in the control condition, legitimacy strongly affected acceptance judgments and resists the influence of displeasing decisions. Only in the unprincipled condition, after people are presented with information portraying the Court as unprincipled, do the subjects' legitimacy attitudes appear to act like a weak attitude.

Of course, there may be other differences between the student sample and a general population that could moderate these two interactions. A study using a student sample cannot rule out all possible unmeasured and unmodeled moderating variables. This study is just the first in hopefully many others that examine what influences variation in the effectiveness and stability of legitimacy and other types of institutional support. Future studies may find moderating variables that limit the scope of these findings, and these studies would be a welcome addition to the literature. Even if that were to occur, this study would have still accomplished an important task. One goal of this paper is to demonstrate the usefulness of moving beyond a conceptualization of legitimacy as something that operates the same way for all individuals. This study has clearly shown that legitimacy can function in one fashion for one group of people and operate in a completely different fashion for another group. Without understanding the variation in how legitimacy functions and impacts the world, it is impossible to have a full understanding of institutional support.