

Measuring Attitudes toward the United States Supreme Court

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It is conventional in research on the legitimacy of the U.S. Supreme Court to rely on a survey question asking about confidence in the leaders of the Court to indicate something about the esteem with which that institution is regarded by the American people. The purpose of this article is to investigate the validity of this measure. Based on a nationally representative survey conducted in 2001, we compare confidence with several different measures of Court legitimacy. Our findings indicate that the confidence replies seem to reflect both short-term and long-term judgments about the Court, with the greater influence coming from satisfaction with how the Court is performing at the moment. We suggest a new set of indicators for measuring the legitimacy of the Court and offer some evidence on the structure of the variance in these items.

The U.S. presidential election of 2000 reminds us once more of the importance of the legitimacy of American political institutions. Many observers believe that the U.S. Supreme Court was able to make its decision in *Bush v. Gore* “stick” primarily due to the legitimacy of the institution itself. The Court issued a controversial ruling, but most Americans seemed to accept the decision as the final word on the dispute, and in fact the election brouhaha ended. Though some believe the Supreme Court depleted its “reservoir of good will” by its decision, its store of institutional legitimacy was apparently sufficient to persuade people to go along with the Court’s decision, even if they strongly disagreed with it.

Unfortunately, as important as legitimacy is for understanding the effectiveness of political institutions, most empirical efforts at understanding this concept are forced (by the availability of copious amounts of data) to rely on a single-item measure of “confidence” in the institution (and/or its leaders). The confidence in institutions battery is, for example, a regular component of the General Social Survey (GSS), and over the years many scholars

have used these items to draw conclusions about the legitimacy of the U.S. Supreme Court (e.g., Caldeira 1986; Marshall 1989; Mondak and Smithey 1997). Popular and journalistic accounts of the Court and the 2000 election also analyze this confidence question as an indicator of something about the effect of the decision on the Court (see for example Bowman 2001). And in political science more generally, the lack of confidence in American institutions has attracted a great deal of attention and concern (e.g., Lipset and Schneider 1987).

But how reliable and valid is the confidence item as an indicator of the legitimacy of an institution? After all, Smith (1981) published a powerful warning about the limits of the confidence questions two decades ago (although his conclusions have gone largely unheeded—and the article uncited—by most of those studying public opinion and the U.S. Supreme Court). Further, some argue that confidence and legitimacy (or at least “diffuse support” for an institution) are not at all the same concept (e.g., Grosskopf and Mondak 1998). Finally, data based on confidence indicators have some undesirable

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properties, as for instance in the common observation that confidence in institutions is typically *not* institution specific—indicating instead more general attitudes toward institutions—and in the finding that confidence is heavily dependent upon the immediate performance of the institution—a finding in sharp contrast to the predictions of Legitimacy Theory. Enough anomalies exist in the confidence literature—and enough thoughtful political scientists have expressed reservations about the meaning of the indicator—to warrant a careful empirical assessment of what the item actually measures.

The purpose of this article is therefore to assess the validity of the conventional confidence indicator. Is confidence a valid measure of institutional legitimacy? Based on a survey of the American mass public conducted in the aftermath of the disputed 2000 presidential election (see Appendix A for details on the survey), we analyze the meaning of confidence by comparing it to several additional measures of attitudes toward the U.S. Supreme Court. We provide both a theoretical justification for our approach to institutional legitimacy, as well as empirical indicators of what we term “institutional loyalty.” We then use these multiple indicators of Court attitudes to ascertain whether the traditional confidence item actually taps institutional legitimacy. No earlier survey has included such a broad panoply of measures of attitudes toward the Supreme Court. Based on these analyses, we offer a recommended set of measures to be used as standard indicators of Court legitimacy. The most important conclusion to emerge from our analysis is that the bulk of the variance in the confidence replies seems to reflect short-term satisfaction or dissatisfaction with the performance of the Court, rather than a more enduring loyalty toward the institution itself.

It is not our purpose in this article to castigate those who rely on the confidence item in their analyses of opinions toward the Court. After all, political scientists would be foolish to ignore completely the vast stores of data collected using this question. Rather, our objective here is to try to provide rigorous empirical evidence on the nature of the variance elicited by the confidence question. With this information, analysts will gain more insight into the meaning of the replies to this question, and perhaps will be more cautious about treating the answers as an indicator of the legitimacy of the Supreme Court.

Confidence in the U.S. Supreme Court

The widely used General Social Survey asks a question in nearly every survey about confidence in various institutions. The question is phrased as follows:

TABLE 1 Confidence in the Leaders of the U.S. Supreme Court, General Social Surveys

Year	Level of Confidence				Total	N
	A Great Deal	Only Some	Hardly Any	Don't Know		
1973	31.5	49.8	15.4	3.3	100.0	1497
1974	33.2	47.9	14.4	4.5	100.0	1482
1975	30.8	46.3	18.6	4.3	100.0	1485
1976	35.4	43.6	15.4	5.6	100.0	1491
1977	35.7	49.4	10.8	4.1	100.0	1522
1978	28.1	52.8	14.6	4.5	100.0	1527
1980	24.6	50.0	19.5	5.9	100.0	1468
1982	29.4	54.2	12.8	3.6	100.0	1850
1983	27.2	54.9	14.1	3.8	100.0	1595
1984	33.2	50.8	12.4	3.6	100.0	978
1986	29.7	52.4	14.1	3.8	100.0	1460
1987	34.3	50.9	10.5	4.4	100.0	1815
1988	34.7	50.3	10.6	4.4	100.0	992
1989	34.5	50.0	10.7	4.7	100.0	1033
1990	35.0	47.9	12.7	4.3	100.0	899
1991	36.9	46.4	12.3	4.4	100.0	1012
1993	30.6	51.8	13.4	4.3	100.0	1054
1994	30.1	50.0	16.4	3.4	100.0	2004
1996	28.3	49.9	16.6	5.3	100.0	1921
1998	31.1	49.9	14.0	5.0	100.0	1905
2000	31.8	49.4	12.7	6.1	100.0	1888

Note: The data entries are percentages, totaling to 100 percent. The number of subjects interviewed is reported in the last column in the table.

I am going to name some institutions in this country. As far as the people running these institutions are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?

One of the institutions about which the GSS asks is the “U.S. Supreme Court.” The responses to this item over the life of the GSS are reported in Table 1.

One crucial question to ask of the GSS measure is why it focuses on individuals instead of institutions. One wonders who the “people running” the Supreme Court are—do respondents understand the question to refer to the chief justice, for instance? Hibbing and Theiss-Morse (1995) have demonstrated that Americans have quite distinctive attitudes toward Congress and members of Congress, and indeed most distinguish between members as a collective and their own individual representative. As a concept and theory, legitimacy is most relevant

to institutions, not to individuals. Nonetheless, scholars are enticed by the availability of the GSS data to use this measure to try to say something about the legitimacy of the Court as an institution, not the specific incumbents of the institution.¹ On the simple criterion of face validity, the confidence item fails as an indicator of institutional loyalty.

Aside from concerns about question wording, these data indicate that slightly less than one-third of the sample expresses a great deal of confidence in the Court, and that only a very small proportion holds “hardly any” confidence in the institution. The remaining one-half of the respondents are lumped together in the highly ambiguous “only some” response category. Opinions toward the leaders of the Court seem reasonably stable over time (see Table 1). Researchers have used data such as these to suggest that there is a crisis of confidence in American political institutions (e.g., Lipset and Schneider 1987), even if the Court draws more confidence than most political institutions in the United States. Whether there is in fact a crisis of institutional legitimacy depends heavily on what those with “only some” confidence actually think about the Court—and, again, only after stipulating that the Court’s leaders and the Court are the same.

Whether the Court has a legitimacy shortfall thus depends on the answers to two important questions. First, is confidence synonymous with institutional legitimacy? And second, what is the meaning of “only some” or “hardly any” confidence in the leaders of an institution? Additional measures of Court attitudes may shed some light on what replies to this confidence item actually measure.

An Alternative Conceptualization of Attitudes toward Institutions

One of the central questions for this article is whether this confidence indicator is a valid measure of institutional legitimacy. To explore this issue in some detail, we must detour briefly to an explication of Legitimacy Theory.

Considerable agreement exists among social scientists on most of the major contours of Legitimacy Theory. For instance, most agree that legitimacy is a normative concept, having something to do with the right (moral and legal) to make decisions. “Authority” is sometimes used as a synonym for legitimacy. Institutions perceived

to be legitimate are those with a widely accepted mandate to render judgments for a political community. “Basically, when people say that laws are ‘legitimate,’ they mean that there is something rightful about the way the laws came about . . . the legitimacy of law rests on the way it comes to be: if that is legitimate, then so are the results, at least most of the time” (Friedman 1998, 256).

Easton and many others use “diffuse support” as a synonym for legitimacy. Diffuse support refers to “a reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants” (Easton 1965, 273). Diffuse support is institutional *loyalty*; it is support that is *not* contingent upon satisfaction with the immediate outputs of the institution. “Loyalty” captures the notion that failure to make policy that is pleasing in the short-term does not *necessarily* undermine basic commitments to support the institution. Legitimacy Theory hypothesizes that institutions without a reservoir of good will may be limited in their ability to go against the preferences of the majority, even when it may be necessary or wise to do so.²

Most analysts distinguish between “diffuse” and “specific” support. Though some thoughtful scholars doubt that the distinction between the two types of support can be made empirically (e.g., Mishler and Rose 1994), most recognize a difference at least at the theoretical level between approval of the policy outputs of an institution in the short-term and more fundamental loyalty to the institution over the long-haul (e.g., Tyler and Mitchell 1994). “Specific support” is satisfaction with the immediate outputs of the institution. When specific support is low (i.e., people are dissatisfied), diffuse support becomes especially important since it cushions the impact of policy dissatisfaction. Over the long-term, the two types of support should be related (and may converge), although the meaning of any given cross-sectional correlation may be unclear (see Gibson, Caldeira, and Baird 1998, 344, and especially footnote 3).

We contend that the most important attitudes ordinary citizens hold toward institutions like the Supreme Court have to do with institutional loyalty. Institutions like courts need the leeway to be able to go against public opinion (as for instance in protecting unpopular political minorities). Thus, a crucial attribute of judicial institutions is the degree to which they enjoy the *loyalty* of their constituents.

¹One of the many contributions of Easton’s early work (1965) was to differentiate between an institution and those who hold positions within the institution. For instance, scholars of the presidency often distinguish between the president and the presidency.

²Comparativists (e.g., Tsebelis 2000; Alivizatos 1995) have recently focused on courts as “veto players” and have acknowledged that legitimacy is a necessary resource if courts are to play this role. See also Gibson and Caldeira (2003).

The Consequences for Theory of Relying on Invalid Measures of Institutional Legitimacy

This measurement issue is terribly significant since it may lead to some important misunderstandings of how people update their views toward institutions. For instance, if researchers are actually measuring attitudes toward the incumbents and their contemporary policy making rather than toward the fundamental legitimacy of the institution itself, then those who analyze the etiology of confidence may mistakenly conclude that Court legitimacy is more volatile than it is in fact were a more valid measure of legitimacy available (e.g., Grosskopf and Mondak 1998; Mondak and Smithey 1997). That is, if confidence measures something akin to “presidential popularity,” rather than enduring institutional loyalty, then of course confidence replies would reflect contemporary satisfactions and dissatisfactions, not a more obdurate reservoir of good will. Thus, this measurement issue is of considerable substantive significance.

For example, one of the most important unanswered questions for the field has to do with whether pre-existing loyalty to the courts cushions the effect of unpopular decisions (like *Bush v. Gore*). Are highly charged decisions capable of undermining the legitimacy of an institution? The answer to this question is of great theoretical and practical significance, as the Court itself has often noted. Legitimacy Theory suggests not—indeed, this is precisely the value of a “reservoir of good will”—but some important recent research suggests that court decisions do change basic orientations toward the institution.

For instance, Grosskopf and Mondak examine whether confidence in the Supreme Court “derives solely from stable factors such as core democratic values, or if citizens alter their evaluations to take into account their views of the Court’s ruling” (1998, 633–4). They rightly note how important this question is: “If only core values matter, then a static depiction of support—treating it as a virtually inexhaustible resource—can be justified. However, if specific decisions can be shown to have an impact on support, then a dynamic view of *legitimacy* is more appropriate” (1998, 634, emphasis added). They conclude from their analysis that *confidence in the Court is very much a function of perceptions and evaluations of court opinions and that unpopular decisions erode the institution’s political capital*. This finding, based on the confidence indicator, presents a direct challenge to Legitimacy Theory. So too do the similar findings of Hoekstra (2000).

It may be, however, that measurement limitations undermine their conclusions about how reactions to indi-

vidual court decisions shape more fundamental attitudes toward the institution. If their dependent variable is actually contaminated with large quantities of short-term specific support (confidence),³ then of course the data would lead to the conclusion that “support” is a function of Court outputs. Had they a more valid measure of legitimacy (theirs was a secondary analysis of data collected in Harris surveys), they may well have discovered that because the Court has a relatively obdurate reservoir of good will, unpopular decisions generate ire that dissipates quickly and has no lasting consequence for the legitimacy of the institution. If the half-life of reactions to individual decisions is short (because citizens have already formed a relatively stable “running tally” in their minds, grounded in their political values), then these reactions to an unpopular decision are of little consequence for institutions. If, however, the rate of decay is slow, then, at a minimum, such decisions constrain the ability of the institution to issue additional unpopular decisions, at least in the short-term. The danger of unresolved validity questions in the measures of Court attitudes is that what seems to some like “merely” an issue of measurement has major theoretical and empirical consequences.

A Multidimensional Attack on Measuring Institutional Legitimacy

To investigate the meaning of the standard GSS confidence items more thoroughly, we included measures of the following concepts in our 2001 national survey.

- (1) Confidence in the leaders of the institution—the conventional confidence measure.
- (2) Overall approval/general affect—a “feeling thermometer.”
- (3) Specific support—general satisfaction with the Court’s performance.
- (4) Specific support—general satisfaction with Court policy.
- (5) Specific support—evaluations of specific policy outputs of the Court.
- (6) Diffuse support—institutional loyalty.⁴

³Grosskopf and Mondak acknowledge the difference between their confidence measure and this approach to measuring diffuse support: “Reference to the ‘people in charge of running the Supreme Court’ likely encourages respondents to contemplate current events rather than institutional history when answering the question, and thus the item is not comparable to measures of diffuse support such as the one developed by Caldeira and Gibson (1992)” (1998, 641).

⁴It is probably obvious by this point, but we essentially equate several terms: institutional legitimacy, diffuse support, and institutional

TABLE 2 Indicators of Loyalty toward the U.S. Supreme Court, 2001

	Percentages (Totaling to 100%)			Mean ^a	Std. Dev.	N
	Not Loyal to the Court	Uncertain	Loyal to the Court			
Do away with the Court	12.9	4.4	82.7	4.23	1.16	1418
Reduce Court's jurisdiction	28.3	11.0	60.7	3.55	1.34	1418
Court can be trusted	17.0	5.1	77.8	3.89	1.17	1418
Court favors some groups	43.7	14.4	41.9	3.02	1.37	1418
Court gets too mixed up in politics	40.8	15.9	43.3	3.05	1.36	1418
Court should interpret the Constitution	22.7	8.1	69.2	3.73	1.31	1418

Note: The items, with the supportive response indicated in parentheses, are:

If the U.S. 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. (Disagree)

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

The Supreme Court can usually be trusted to make decisions that are right for the country as a whole. (Agree)

The decisions of the U.S. Supreme Court favor some groups more than others. (Disagree)

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

The U.S. 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. (Agree)

^aThe means and standardized deviations are based on the uncollapsed answers collected on a five-point Likert response set.

No earlier survey has included such a broad complement of indicators of attitudes toward the Supreme Court. Appendix B reports the text of each of these questions.

Diffuse Support—Institutional Loyalty

Our thinking about institutional loyalty follows a considerable body of research on conceptualizing and measuring mass perceptions of high courts (see Caldeira and Gibson 1992, Gibson, Caldeira, and Baird 1998, Caldeira and Gibson 1995, and Gibson and Caldeira 1995, 1998, 2003).⁵ That research conceptualizes loyalty as opposition to making fundamental structural and functional changes in the institution (see Boynton and Loewenberg 1973) and is grounded in the history of attacks by politicians against courts in the U.S. (see Caldeira 1987) and elsewhere (e.g., manipulation of their jurisdiction). As Caldeira and Gibson describe it, those who have no loyalty toward the Supreme Court are willing “to accept, make, or countenance major changes in the fundamental attributes of how the high bench functions or fits into the U.S. constitutional system” (1992, 638; see also Loewenberg 1971). Loyalty is also characterized by a generalized trust that

loyalty. This is also the same concept that Caldeira and Gibson (1992) refer to as “institutional support.”

⁵For a full explication of the conceptual and theoretical meaning of this concept see the discussion in Caldeira and Gibson (1992, 636–42). Here, we provide only an overview of the conceptualization since this is well-trodden territory.

the institution will perform acceptably in the future. To the extent that Americans support fundamental structural changes in the Court and distrust it, they are extending little legitimacy to the institution. Conceptually, loyalty thus ranges from complete unwillingness to support the continued existence of the institution to staunch institutional fealty.

Table 2 reports the responses from the six items we use to measure loyalty toward the U.S. Supreme Court. The first three columns of figures represent the frequencies after collapsing “strong” and not so strong responses, and the column labeled “Loyal to the Court” reports the percentage of respondents giving answers indicating loyalty to the Court (irrespective of whether loyalty requires an agree or disagree reply). The means and standard deviations are based on the uncollapsed data, and in every instance higher mean scores indicate more loyalty toward the Supreme Court.

These data reveal a remarkably high level of loyalty toward the Supreme Court on the part of most Americans. On average, 3.8 of the statements elicit support for the Court (data not shown). On the clearest measure of institutional loyalty—the first item—support is extremely high: over four of five Americans assert that it would *not* be better to do away with the Court, even if there were fairly widespread displeasure with its decisions.⁶ Though a significant minority worries about politics and partisanship

⁶For a cross-national comparison of responses to this item, see Gibson, Caldeira, and Baird (1998), and Gibson and Caldeira (2003).

on the Court, over three-fourths of the sample believes that the Court (not the leaders of the Court) can generally be trusted. These data indicate that the Supreme Court enjoys a reasonably deep reservoir of good will, even after the tumultuous presidential election of 2000.⁷

Indicators of Specific Support

Attitudes toward an institution can also be measured with greater attention to its contemporary policy making. We asked the respondents to judge how well the Court does its job, whether its policy outputs are too liberal or too conservative, and whether the respondent approves of the Court’s policy making in three specific areas. The results of these various indicators of specific support are reported in Table 3.

The data in this table reveal widespread approval of the performance of the Supreme Court: Nearly all Americans believe the Court is doing at least a pretty good job, and most believe its policy positions are about right. When it comes to specific rulings, considerable variability exists, with a large majority agreeing with placing restrictions on anti-abortion activists, but with a large majority also disagreeing with the Court’s decision to ban prayer at high school football games. It is obvious just from the distributions of these variables that specific policy disagreements with the Court do not directly erode overall satisfaction with the institution’s performance. Generally, even in the aftermath of *Bush v. Gore*, most American are reasonably well satisfied with their Supreme Court (see Gibson, Caldeira, and Spence forthcoming).

Institutional Feeling Thermometers

It is conventional in the American National Election Studies to use feeling thermometers to measure attitudes toward a variety of institutions and groups, and some research on the Supreme Court has considered general affect toward the Court as an important indicator of

⁷The responses to all of these propositions are positively correlated, with an average interitem correlation of .26. The set of indicators is generally reliable, with a Cronbach’s alpha (α —an indicator of internal consistency) of .68. Deletion of none of the items would increase the alpha coefficient. When factor analyzed, these six indicators generate a single significant factor (eigenvalue = 2.3, accounting for 38 % of the interitem variance; the eigenvalue of the second factor extracted is .91). All of the items load significantly on the first unrotated factor. The statement pitting constitutional interpretation against majority opinion has the weakest loading on the factor (.39), most likely because it is a complex statement about whether the Court should be subservient to majority opinion. We have calculated an Index of Institutional Loyalty as the mean response to these six items.

TABLE 3 Specific Support for the U.S. Supreme Court, 2001

	Percentage
<i>General Approval of Performance</i>	
Great job	12.8
Pretty good job	71.0
Not very good job	9.5
Poor job	3.6
Don’t know	3.1
Total (N)	100.0% (1417)
<i>General Satisfaction with Policy</i>	
About right	55.6
Too liberal or too conservative	35.1
Don’t know	9.3
Total (N)	100.0% (1418)
<i>Satisfaction with Specific Policies</i>	
<i>Restrictions on Anti-Abortion Activists</i>	
Agree with Court	77.3
Neither agree nor disagree/Don’t know	5.4
Disagree with Court	17.3
Total (N)	100.0% (1414)
<i>Blocking Gays from the Boy Scouts</i>	
Agree with Court	55.0
Neither agree nor disagree/Don’t know	6.5
Disagree with Court	38.5
Total (N)	100.0% (1416)
<i>Banning Prayer at High School Football Games</i>	
Agree with Court	24.4
Neither agree nor disagree/Don’t know	4.2
Disagree with Court	71.4
Total (N)	100.0% (1418)

institutional legitimacy (e.g., Redlawsk and Lau 1994). Consequently, we asked:

Next, I would like to get your feelings toward some of our political leaders and groups. I’ll read the name of a group and I’d like you to rate that group using something we call the feeling thermometer. You can use any number between 0 and 100 to express your feelings. Ratings above 50 degrees mean that you feel favorable and warm toward the group, while those below 50 degrees mean that you don’t feel favorable toward the group. You would rate the group at the 50 degree mark if you don’t feel particularly warm or cold toward it. If we come to a group whose name you don’t recognize, you don’t need to rate that group. Just tell me and we’ll move on to the next one.

TABLE 4 Feeling Thermometer Responses toward President Bush and Various Groups and Institutions, 2001

Stimulus	Percentages ^a		Percentages ^b			Mean ^c	Std. Dev.	N
	Don't Know	50 Degrees	LT 40 Degrees	40–60 Degrees	GT 60 Degrees			
Congress	1.1	30.6	8.1	57.6	34.2	57.4	17.2	1401
Supreme Court	1.6	23.2	7.0	41.9	51.1	63.8	19.5	1394
Democrats	1.1	26.6	13.6	49.5	38.9	58.4	23.0	1399
Republicans	.8	25.6	18.3	46.2	35.6	54.6	23.1	1401
Liberals	7.2	28.2	25.8	58.4	15.8	45.4	21.2	1311
Conservatives	5.4	31.1	16.2	55.8	28.0	53.3	21.4	1339
President Bush	1.2	16.8	24.8	32.1	43.1	55.2	29.0	1395

Note: High scores indicate warmer feelings toward the institution.

^aThese percentages are based on including those who don't know how they feel toward the institution (the first data column in this table) in the denominators.

^bThese percentages are based on excluding respondents who don't know how they feel toward the institution (the first data column in this table) from the denominators. Except for rounding errors, these row percentages total to 100%.

^cThe means and standard deviations are based on excluding respondents who don't know how they feel toward the institution (the first data column in this table) from the calculations.

We asked about six institutions and President Bush. The results are shown in Table 4.⁸

With an average rating of 63.8 degrees, the Supreme Court attracts the warmest feelings of any of the institutions included in the list. Over half of our respondents rated the Court above 60 degrees, in contrast, for instance, to only 34.2% rating the Congress so warmly. Still, Congress has on balance a positive average rating among these respondents. In general, a relatively small proportion of the sample holds chilly feelings toward these American institutions.

What does a feeling thermometer actually measure? We know of no empirical investigation of the meaning of thermometer responses (but see Wilcox, Sigelman, and Cook 1989), but it is likely that such feelings are dominated more by approval of the contemporary performance of an institution than by fundamental commitments to it. For instance, Kimball and Patterson (1997) use the feeling thermometer as applied to Congress as an indicator

⁸We randomly varied the order of presentation of these seven stimuli. In only a single instance was order of presentation related to the responses, and even on that question the relationship is quite weak ($p = .03$). When the question about Congress was asked second, responses tended to be slightly warmer (mean = 60.8); when Congress was the last institution asked about the responses were slightly colder (mean = 55.0). However, the effect of order of presentation is *not* monotonic (although affect declines slightly from being asked in the fourth position to the last position—from a mean of 58.0 to a mean of 55.0). Because this relationship is so weak, since it appears to have no substantive interpretation, and since the effect is *not* apparent on any of the other feeling thermometer responses, we conclude that order of presentation can be safely ignored in this analysis.

of “Congressional Approval.” They are a bit ambiguous about whether they consider approval to be more similar to diffuse or specific support (although they do say that the thermometer scores do not refer “broadly or diffusely to Congress as a political institution” (1997, 706)). The performance of the indicator, however, suggests that warm feelings are more closely related to short-term evaluations of the institution than to more enduring commitments to Congress. We return to this issue below after consideration of the empirical evidence.

Summary

Thus, the evidence here is that most Americans feel quite positively toward the Supreme Court. They think it is doing a pretty good job, and even if it were not, they are fairly strongly committed to the institution itself. That is, loyalty toward the Court is reasonably strong and widespread.

The question of what these various questions measure cannot be resolved through analysis of univariate frequency distributions alone. Instead, we must apply some multivariate techniques as a means of establishing the validity of the different approaches to measuring institutional legitimacy.

Decomposing the Variance in the Confidence Measure

One way to discern the meaning of the confidence measure is to analyze the interrelationships between

TABLE 5 Decomposing the Variance in Confidence in the Supreme Court, 2001

Predictor	Confidence in the Court		
	b	s.e.	β
General Affect	.01	.00	.22***
General Approval of Performance	.31	.03	.28***
General Satisfaction with Policy	.16	.03	.11***
Satisfaction with Specific Policies	.02	.02	.02
Institutional Loyalty	.16	.02	.18***
Intercept	-.55	.07	
Standard Deviation—Dependent Variable	.67		
Standard Error of Estimate	.53		
R ²			.36***
N	1415		

*** $p < .001$, ** $p < .001$, * $p < .05$.

confidence and the other indicators of attitudes toward the Court. Table 5 reports the results of regressing the variable measuring confidence in the Supreme Court on the various other indicators of Court attitudes. The equation has reasonably strong predictive ability, accounting for over one-third of the variance in confidence in the Court. The important question is which of the various predictors contributes most to the variance in confidence.

The best predictor of confidence is General Approval of the Performance of the Court—those who think the Court performs well in doing its main job in government are more likely to have confidence in the institution (or vice versa). This may suggest that confidence is best thought of as a measure of general satisfaction with the contemporary performance of the institution. The next best predictor is General Affect toward the Court (the feeling thermometer scores), with those holding warmer feelings toward the institution more likely to have confidence in it. Institutional loyalty is positively related to confidence (as is General Satisfaction with Policy), but not particularly strongly. Judgments of specific policies are entirely *unrelated* to confidence in the Court.

Two important conclusions emerge from this analysis. First, institutional loyalty and confidence in the institution seem to be relatively distinct aspects of how people feel about the Supreme Court. Those expressing more confidence in the institution are more likely to express loyalty toward the Court—it would be disquieting were

this not the case—but the standardized regression coefficient of only .18 indicates that loyalty and confidence are far from synonymous.

Second, confidence seems to indicate relatively short-term but nonetheless global judgments of how the institution is performing. It is not dependent upon approval of any particular policy decision by the institution (we concede that the measures of approval of Court policy may well reflect respondent attitudes toward the issues themselves rather than a judgment of whether the Court made satisfactory decisions in these cases), but instead seems to reflect a holistic judgment about institutional performance. We have no evidence of the temporal stability of this sort of attitude, but presumably citizens update their judgments of institutional performance as general trends in Court policy making change over time.⁹ These attitudes may not be as volatile as presidential popularity, but they are unlikely to be as stable as institutional loyalty. If confidence is measuring short-term satisfaction, then it seems reasonable that it would respond to contemporary events.

In order to ascertain more carefully the meaning of different levels of confidence, we examine the relationships between the traditional measure of confidence in the Court and the individual indicators of institutional loyalty (or diffuse support). These are reported in Table 6. Several conclusions emerge from this table. First, loyalty and confidence are indeed related, with the eta coefficients ranging from .17 for the first item to .38 for the item about getting mixed up in politics (coefficients not shown). Most of these are at least moderate relationships. Of course, were the variables not related, it would be cause for worrying about the validity of both sets of indicators.

Second, a great deal of loyalty to the institution can be found *even among those who have hardly any confidence in the Court*. For instance, the vast majority of those who have little confidence in the Court are nonetheless *unwilling* to support doing away with the institution. Clearly, a relationship exists between these two variables, but those expressing hardly any confidence in the institution are only somewhat less loyal to the institution than those expressing a great deal of confidence in the Court, at least on most of indicators. Most importantly, low levels of confidence should certainly *not* be interpreted as indicating low institutional legitimacy. Even on the item about

⁹Gibson and Caldeira (1992) discovered that the attitudes of blacks toward the Court seemed to have changed over time. Still, they were able to identify a “Warren Court cohort” among African Americans who exhibited an unusually strong attachment to the Court, an attachment that may have shifted little since the glory days of the Civil Rights Revolution. Unfortunately, however, longitudinal analyses of institutional legitimacy are practically nonexistent in our field, so we know little about the dynamics of updating such opinions.

TABLE 6 The Relationship Between Confidence and Institutional Loyalty

Loyalty Toward the Court	Confidence in the Court			
	Hardly Any	Don't Know	Only Some	A Great Deal
Not do away with the Court	70.4	72.7	84.0	86.1
Not reduce Court's jurisdiction	34.5	33.3	57.5	75.8
Court can be trusted	46.4	75.0	77.2	89.9
Court does not favor some groups	21.3	21.2	37.9	55.6
Court does not get too mixed up in politics	21.2	21.2	36.5	61.7
Court should interpret the Constitution	56.7	32.4	67.3	78.5
<i>Obey Court even when disagree</i>	77.7	57.6	81.8	92.4
Average Number of Supportive Answers	2.5	2.6	3.6	4.5
Approximate Total N	179	33	694	512

Note: The entries are percentages that indicate the proportion of those at each level of confidence who express loyalty toward the Supreme Court.

whether the Court can be trusted, 46.4% of those expressing “hardly any” confidence in the leaders of the Court say that the Court itself can be trusted. Indeed, this is a plurality of the respondents since only 45.3% of the subjects disagreed that the Court can be trusted (data not shown).

Third, those who express a great deal of confidence in the Court are typically decidedly more supportive than those expressing “only some” confidence.¹⁰ The average number of items on which support is expressed is 4.5, in comparison to 3.6. High confidence scores seem to correspond to high levels of institutional loyalty. Still, those with “only some” confidence in the leaders of the Court seem to express fairly high levels of loyalty toward the Supreme Court as an institution.

Finally, respondents who “don’t know” whether the Court can be trusted are nonetheless fairly supportive of the institution (although the percentages on the individual items are misleading in the sense that large percentages of these people gave “uncertain” or “don’t know” responses to the loyalty items). Nearly three-fourths of these respondents oppose doing away with the Court, and a similar number assert that generally the Court can be trusted.

Replies to the confidence question are certainly related to more direct measures of institutional legitimacy. But the data in this table demonstrate that the confidence variable is not a particularly useful measure of legitimacy, especially since those with hardly any confidence in the leaders of the Court nonetheless believe that the Court should not be done away with, that the Court should

be the interpreter of the Constitution, and that the Court generally can be trusted. Thus, legitimacy is higher among the “hardly any confidence” group than is implied by the literal response category “hardly any.”¹¹ Conversely, those who have “only some” confidence in the Court nonetheless extend a considerable amount of legitimacy to the institution. Finally, the psychometric properties of this single-item indicator of Court confidence pale in comparison to the properties of the multi-item scale. Generally, it seems that confidence is not entirely invalid as a measure of legitimacy (i.e., the “correlation” between the concept and the indicator is not zero), but that confidence only modestly reflects institutional legitimacy.

We have included one additional measure in Table 6—a question about the willingness to comply with a court decision.¹² Since we agree entirely with the conventional distinction between institutional legitimacy and the propensity toward compliance with court decisions (see Gibson 1989; Gibson and Caldeira 1995, 2003), we treat the responses to this question as conceptually independent of both loyalty and confidence. Table 6 nonetheless reveals a relationship between confidence and obedience, although not a particularly strong one. The most important finding, however, is that fully 77.7% of those with “hardly any” confidence in the Court (and over 80% of those with “only some” confidence) nonetheless report that they would obey a Court decision even when they disagreed with it. Thus, not only do those low in confidence

¹⁰These data suggest that a great deal of measurement error is introduced by collapsing these responses into virtually any sort of dichotomous summary variable (as in Richardson, Houston, and Hadjiharalambous 2001).

¹¹Technically, this suggests that the “hardly any” response reflects a variety of points-of-view toward the Court and therefore that its use contributes to measurement error. This error is likely a mixture of random and systematic components.

¹²The item read: “People should obey the U.S. Supreme Court even when they disagree with its decisions.”

TABLE 7 Decomposing the Variance in Loyalty toward the Supreme Court

Predictor	Institutional Loyalty		
	b	s.e.	β
General Affect	.01	.00	.29***
General Approval of Performance	.19	.03	.16***
General Satisfaction with Policy	.21	.04	.13***
Satisfaction with Specific Policies	.14	.02	.15***
Confidence in the Court	.20	.03	.17***
Intercept	1.99	.07	
Standard Deviation— Dependent Variable	.75		
Standard Error of Estimate	.59		
R ²			.38***
N	1415		

*** $p < .001$, ** $p < .001$, * $p < .05$.

in the leaders of the Court reject doing away with the institution, but they are also fairly strongly predisposed to accept even dissatisfying Court decisions.

Decomposing the Variance in the Measure of Institutional Loyalty

In a similar fashion, the variance in the index of loyalty toward the Court can be dissected. Table 7 reports the results of regressing the index on the other measures of attitudes toward the Court.

Institutional loyalty is most strongly related to general affect toward the Court (the feeling thermometer)—those with “warmer” feelings toward the Court are also more likely to be loyal to the institution. The measures of specific support are only modestly related to institutional loyalty, although the cumulative impact of these three measures is not trivial. Most interestingly, only a weak relationship exists between confidence and institutional loyalty. The two indicators are related, but clearly institutional loyalty captures a great deal more than confidence in the leaders of the Supreme Court.

Suggested Measures of Institutional Loyalty

In light of all these findings, how should the legitimacy of the Supreme Court be measured? Several recommendations occur to us.

First, the question asking about confidence in the leaders of the Supreme Court is less than an ideal mea-

sure. It appears to be capturing something about *both* long-term and short-term attitudes toward the institution, although the latter factors seem to dominate the variance. Given the undesirable psychometric properties of this measure, it seems wise not to employ the question as a measure of institutional legitimacy unless no other indicators are available. Future research should be sensitive to the strong influence of contemporary events on replies to the confidence question.

We began this project highly skeptical about using a feeling thermometer to measure attitudes toward the Court. After all, what feeling “warm” toward an institution means is not entirely obvious (at least to us). The empirical analysis, however, suggests that the feeling thermometer is measuring highly general attitudes toward the institution, which include some elements of loyalty. For our tastes, the feeling thermometer also has some undesirable psychometric properties (e.g., it is a single-item indicator), but at least it differentiates among individuals better than the simple confidence question.

It may not be surprising that the approach we favor the most is the one based on the work of Caldeira and Gibson (1992). Their item about doing away with the Court has the highest face validity, given Easton’s original conceptualization, even if the variance is restricted in the case of the United States. Indeed, the three items they have used in their cross-national work (do away with the institution, reduce its jurisdiction, and whether the institution can be trusted) seem to be a quite reasonable beginning point for developing a scale of institutional commitment.

We supplemented this core of items with three new statements. One of these items continues in the spirit of Caldeira and Gibson—the question of who should interpret the Constitution. Since judicial review is a fundamental element of the powers of the Supreme Court, to prefer that the power be put elsewhere is to threaten directly the institution. Unfortunately, this statement may be too sophisticated; it seems likely that many respondents were “guessing” at the answer, contributing to the unreliability of the proposition.

The last two items go to the partiality of the institution, something Murphy and Tanenhaus (1968) emphasized in their original work on diffuse support for the Court. We are not certain that these items raise the correct issues for loyalty. The statements certainly play on the respondent’s expectations that the Court will be impartial (e.g., Scheb and Lyons 2001)—and those viewing the institution as partial are unlikely to be loyal to it—but it now seems like these items might better be thought of as perceptions of the performance of the institution, perceptions that influence judgments about the institution

itself. Perceptions, expectations, and judgments are all closely intertwined, so these variables perform acceptably in the empirical analysis. Conceptually, however, they require a stretching of the loyalty concept in a way not particularly satisfying. More work on developing additional indicators of loyalty toward the Court must be conducted.

The development of additional measures might focus on (a) punishing the justices and the institution for the decisions it makes, (b) other radical alterations in the institution (e.g., making the justices directly accountable to the president through fixed, renewal terms), and (c) general statements about how much leeway the institution should be given before holding it accountable for its decisions.

Discussion and Conclusions

This analysis support two types of conclusions: substantive findings about the legitimacy of the U.S. Supreme Court and findings about how to measure attitudes toward institutions.

The U.S. Supreme Court currently enjoys a great deal of institutional legitimacy. This is perhaps not surprising in light of extant research, although discovering such a high level of legitimacy in the aftermath of the disputed presidential election will surely be an unexpected finding for some (see Gibson, Caldeira, and Spence forthcoming). People in the United States are satisfied with the performance of their Supreme Court and are quite loyal to the institution itself.

Perhaps more important is the rather limited relationship between performance evaluations and loyalty to the Supreme Court. These two types of attitudes are of course not entirely unrelated, but commitments to the Supreme Court are *not* largely a function of whether one is pleased with how it is doing its job. Even less influential are perceptions of decisions in individual cases. When people have developed a “running tally” about an institution—a sort of historical summary of the good and bad things an institution has done—it is difficult for any given decision to have much incremental influence on that tally. Institutional loyalty is valuable to the Court precisely because it is so weakly related to actions the Court takes at the moment.

In terms of measurement, we must begin with a caveat about the timing of our survey. It seems entirely likely that our survey results are influenced by the heightened awareness of the Supreme Court as a result of the election imbroglio. This most likely crystallized attitudes toward the Court, bringing them together, making them more

coherent. Whether our results can be generalized to more placid times is unclear.¹³

Nonetheless, we have learned something about the structure of the variance in the conventional confidence measure. The question about confidence in the leaders of the Supreme Court picks up two types of variance: short-term satisfaction with the performance of the institution and long-term attachments to the institution itself. We tend to see the former source of variance as dominant, but admit that the evidence is ambiguous. We also note that confidence seems little affected by approval or disapproval of specific court decisions. Confidence thus seems to reflect to some considerable degree what we think of as specific support—satisfaction in general with the outputs of the institution.

The confidence measure has actually performed better than we expected. Indeed, at least some earlier research seems to have gotten exactly correct the meaning of the confidence responses (even if their conclusions were based on intuitions and speculation alone, not rigorous data analysis). Confidence is not the same thing as diffuse support for an institution. Nor is it entirely dependent upon current events and decisions. Those who analyze confidence to learn something about the legitimacy of the Supreme Court ought to be sensitive to these findings that confidence reflects a blend of short-term and long-term judgments of the institution. The former variance is likely related to contemporary events; the latter variance is most likely not.

¹³The issue of generalizability is actually more complicated than it might seem at first glance. It is probably true that our 2001 survey resulted in more across-measure consistency than might exist were the survey conducted when the Court is less salient. But it also seems likely that people hold a variety of views toward institutions—how they are doing at the moment, whether the institution is trustworthy, etc.—and that unless called upon to do so, they do not necessarily reconcile these various viewpoints. In times of relatively high salience, people do make some effort to reconcile these attitudes, and they do so in an ongoing process, prior to the interview. In low salience periods, the interview stimulates the attitudes, and some on-the-spot reconciliation takes place, but because the attitudes have been dormant for some time the responses may not be especially coherent. So, the intercorrelations are likely weaker.

But which of the two conditions is most important—or, to put it another way, which do we most want to know about? When there is controversy that threatens the Court, the institution is salient (almost by definition). When the institution is not salient, the interview is in essence an artificial attempt to simulate the salient condition, by forcing respondents to assemble all their thoughts and put them into a coherent package.

So, our conclusion here is that, given the concerns of Legitimacy Theory (how can the Court avoid being crippled by making highly salient, controversial, and unpopular decisions), perhaps the conditions under which our survey was conducted are in fact more typical of the conditions under which institutional loyalty actually matters.

We worry as well about whether the confidence question always measures the same thing. When the Court is not salient, perhaps a different sort of attitude is being tapped as compared to when the Court is highly visible. Confidence is such an ambiguous term that the meaning respondents assign to it may well vary depending upon what controversies are boiling at the time of the survey.

Care must be also be taken in interpreting the meaning of “hardly any” confidence in the leaders of the Court. Just because one has little confidence does not mean one is not firmly attached to the institution itself. Indeed, loyalty means standing by the institution *even when* one has little confidence in its performance. Those without confidence in the Supreme Court are still unwilling to get rid of it or significantly change the institution, just as they are generally willing to comply with its decisions. No institution profits from having high “no confidence” scores, but we strongly doubt that the decline in confidence over the last few decades really threatens the legitimacy of the U.S. Supreme Court itself.

We do not doubt that sustained policy disagreement can undermine legitimacy. That is why we are attracted to the concept “loyalty.” Certainly, loyalty to anything—even to an institution or nation-state—can be undermined over time by a series of displeasing encounters. But Easton got the meaning of legitimacy exactly correct when it called it a “reservoir of good will.” A few rainless months do not seriously deplete a reservoir. A sustained drought, however, can exhaust the supply of water. This is the meaning of legitimacy we find most useful.

Appendix A Survey Design

This research is based on a survey conducted in early 2001 by the Center for Survey Research (CSR) at The Ohio State University. The survey is based on a typical Random-Digit-Dial (RDD) sample of the American mass public and an over-sample of African Americans. The fieldwork in the primary sample was conducted from January 5 through January 19, 2001, with 1,006 interviews completed during this period. Telephone interviewing was employed, utilizing a RDD sample purchased from Genesys Sampling Systems. The sample is representative of English-speaking households in the 48 contiguous U.S. states (and Washington, D.C.). Within households, respondents were selected by the “last birthday” technique (see Lavrakas 1993, 111–3). The median length of interview was about twenty minutes.

Using the AAPOR standards (American Association for Public Opinion Research 2000), several response rates were calculated. According to AAPOR Response Rate 5, our survey had rate of 35%; according to Response Rate 1, the rate was 26%. Using AAPOR’s Cooperation Rate 3, our “cooperation rate” was 49%; modifying this rate by taking into account all households in which it is certain that an interviewer spoke with the selected respondent, the cooperation rate climbs to 78%.

We also surveyed an over-sample of African Americans. We sampled from census tracts in which the concentration of African-American households was 25% or greater. The field work was conducted from January 22, 2001, through February 12, 2001. In all respects, the methods employed in the over-sample were identical to those employed in the primary sample.

A total of 409 interviews with African-American respondents were completed in the over-sample. The response rates for the over-sample are: AAPOR Response Rate 1: 30%; AAPOR Response Rate 5: 40%; AAPOR Cooperation Rate 3: 55%; and Modified AAPOR Cooperation Rate 3: 80%.

We have weighted these data to adjust for the unequal probabilities of selection (i.e., the over-sample), and non-response (following the convention of the American National Election Study—see Survey Research Center n.d.).

Appendix B Measures of Attitudes toward the Supreme Court

Unless otherwise indicated, the response set for the following items is:

1. Agree strongly
2. Agree somewhat
3. Neither agree nor disagree
4. Disagree somewhat
5. Disagree strongly

Confidence in the Supreme Court. I am going to name some institutions in this country. As far as the people running these institutions are concerned, please tell me for each whether you have a great deal of confidence, only some confidence, or hardly any confidence at all in each of them.

[Note: The order of presentation of the institutions was randomly varied.]

How much confidence do you have in the U.S. Supreme Court? A great deal of confidence, only some confidence, or hardly any confidence?

General affect. Next, I would like to get your feelings toward some of our political leaders and groups. I'll read the name of a group and I'd like you to rate that group using something we call the feeling thermometer. You can use any number between 0 and 100 to express your feelings. Ratings above 50 degrees mean that you feel favorable and warm toward the group, while those below 50 degrees mean that you don't feel favorable toward the group. You would rate the group at the 50 degree mark if you don't feel particularly warm or cold toward it. If we come to a group whose name you don't recognize, you don't need to rate that group. Just tell me and we'll move on to the next one.

[Note: The order of presentation of the institutions and groups was randomly varied.]

How do you feel about the
U.S. Supreme Court? 0–100 Degrees

General approval of performance. How well do you think the U.S. Supreme Court does its main job in government? Would you say it does a great job, a pretty good job, not very good job, or a poor job?

General satisfaction with policy. In general, would you say that the Supreme Court is too liberal, or too conservative, or about right in its decisions?

Note: Satisfaction is indicated by an "about right" response; those saying the Court is either too liberal or too conservative are scored as dissatisfied.

Satisfaction with specific policies. As I read a list of some recent decisions by the Supreme Court, please tell me if you agree strongly, agree somewhat, neither agree nor disagree, disagree somewhat, or disagree strongly with each one.

What about the recent decision upholding a state law requiring anti-abortion activists seeking to counsel women who are trying to get an abortion to stay at least eight feet away from the women as they enter and leave medical facilities?

The recent decision that the Boy Scouts of America have a constitutional right to block gay men from becoming troop leaders?

The recent decision that public school districts cannot promote prayer before high school football games, saying it violates the separation between church and state?

Institutional loyalty. If the U.S. 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 can usually be trusted to make decisions that are right for the country as a whole.

The decisions of the U.S. Supreme Court favor some groups more than others.

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

The U.S. 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.

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