

Losing Legitimacy:
The Challenges of the *Dobbs* Ruling to Conventional Legitimacy Theory*

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Abstract:

Extant research has established that displeasure with a Supreme Court ruling typically has negligible consequences for institutional support, largely because, as Legitimacy Theory's Positivity Bias explains, judicial decisions are invariably delivered with the accoutrements of legitimizing symbols. The Court's ruling in *Dobbs*, abrogating a federal constitutional right to abortion services, may provide a challenge to Legitimacy Theory because displeasure with the ruling seems to be so widespread and intense. My purpose in this research is to determine whether the ruling in fact lessened the Court's legitimacy. Generally, I conclude that *Dobbs* produced a sizable dent in institutional support, perhaps an unprecedented dent, in part because abortion attitudes for many are infused with moral content and in part owing to the Court's substantial tilt to the right since 2020. Indeed, the Court's legitimacy may be at greater risk today than at any time since FDR's 1930s attack on the institution.

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Perhaps the most momentous U.S. Supreme Court decision in recent times is the *Dobbs* decision which overturned *Roe v. Wade* and abrogated previously declared privacy rights.¹ Indeed, by many criteria, this ruling is quite likely the most legitimacy-consequential ruling of our time.² If any ruling by the U.S. Supreme Court were to shape public attitudes toward the institution, it likely is this one.³

The *Dobbs* decision is not just important for practical American politics. In addition, the ruling presents an opportunity to reconsider what is the dominant theory of how citizens incorporate court decisions into their attitudes toward the institution: Legitimacy Theory's Positivity Bias (see Gibson and Caldeira 2009; Gibson and Nelson 2017, 2018). In a nutshell, Positivity Bias argues that, for most Americans, adverse Supreme Court rulings have little if any impact on institutional legitimacy because those decisions arrive enveloped in the symbols of judicial authority (e.g., robes). Positivity Theory has become embraced by most scholars (e.g., Krewson 2022).

The primary purpose of this paper is to address a number of hypotheses drawn from Legitimacy Theory and applied to the *Dobbs* ruling. In addition, hypotheses grounded in several collateral bodies of theory are tested in this consideration of public reactions to the abortion rights

¹*Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ____ (2022).

Obviously, the Court also overturned *Casey*. In this paper, I will not pay careful attention to the ruling's formalities since I am mainly interested in how it was understood and evaluated by the American people.

² See Online Appendix A for detailed support for this conclusion.

³ For just one example of discussions of the threats to the Supreme Court's legitimacy in the popular mass media, see Hounshell and Zernike 2022.

decision. My most important conclusions are that, unlike almost all earlier research on the impact of events on the Court, *Dobbs* materially undermined the institution’s legitimacy, in part owing to abortion being an issue tenaciously grounded in moral concerns—and hence resistant to compromise—and in part owing to dissatisfaction that seems to have built up as the Court has moved headlong in the conservative direction in recent terms. These findings pose an important challenge to existing versions of Legitimacy Theory.

Explicating the Theory of Institutional Legitimacy

This research concerns itself with the degree to which people have faith in America’s democratic institutions such as the U.S. Supreme Court. According to cultural theories of democracy, the views of ordinary people are crucial to the survival of democratic institutions.⁴

Scholars generally agree on the basic contours of Legitimacy Theory. For instance, most recognize that legitimacy is a normative concept, having something to do with the right (moral and legal) to make decisions. “Authority” and “diffuse support” are sometimes used as synonyms for legitimacy (Easton 1965, 1975). As Tyler (2006, 375) observes:

Legitimacy is a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just. Because of legitimacy, people feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear of punishment or anticipation of reward. Being legitimate is important to the success of authorities, institutions, and institutional arrangements since it is difficult to exert influence over others based solely upon the possession and use of power. Being able to gain voluntary acquiescence from most people, most of the time, due to their sense of obligation increases effectiveness during periods of scarcity, crisis, and conflict.

⁴ For useful reviews of Legitimacy Theory, see Tyler 2006, Gibson and Nelson 2014, Gibson 2015, Nelson and Gibson 2018, and especially Smyth 2021.

In other words, institutions perceived as legitimate have a widely accepted ability to make binding judgments for a political community; those without legitimacy find their authority contested.

Legitimacy (diffuse support) differs from a second type of institutional support: specific support. Whereas diffuse support might be conceptualized as a “reservoir of goodwill” that institutions can draw upon to achieve implementation of disagreeable decisions or in times of crisis (Caldeira and Gibson 1992, 658), specific support is little more than “satisfaction with the performance of a political institution” (Gibson and Caldeira 1992, 1126). Institutional legitimacy represents longer-term, global judgments about an institution’s authority, whereas specific support represents shorter-term and more fleeting opinions about particular actions taken by an institution. Diffuse support might be considered a form of institutional loyalty. Thus, a crucial attribute of institutions is the degree to which they enjoy the loyalty, *not just the approval*, of their constituents.

Legitimacy is particularly relevant when individuals disagree about political judgments. When an institution makes a decision acceptable to all of its constituents, discussions of legitimacy are rarely relevant or necessary. In Gibson’s (2015) widely cited phrasing, “legitimacy is for losers”; in other words, legitimacy takes on its primary significance in the presence of an *objection precondition*. When an institution’s constituents disagree over a policy decision, some may ask whether the institution has the authority—the “right”—to make the decision. Legitimate institutions are those recognized as appropriate decision-making bodies *even when* one disagrees with the outputs of the institutions; their decisions are respected, enforced, and implemented even in the face of dissent. To be effective, courts especially need legitimacy—the leeway to go against public opinion (for instance, in order to protect the rights of unpopular political minorities). Consequently, institutional legitimacy is an invaluable and irreplaceable form of political capital.

While some research has focused on how institutions acquire legitimacy (for a review, see

Tyler and Trinkner 2018), attention to how legitimacy is lost is much less well-investigated. Several scholars have examined the consequences of individual court decisions for judicial legitimacy (e.g., Christenson and Glick 2015, 2019; Zilis 2015), but such effects seem to be weak at best (e.g., Gibson and Nelson 2015; Gibson 2015). Gibson and Caldeira (1992) have suggested that *sustained* disappointment with an institution’s policy outputs can undermine legitimacy and use that hypothesis to account for the declining (and persistently low) support for the U.S. Supreme Court among African Americans (see Gibson and Nelson 2018). Events politicizing the judiciary—such as highly contentious and partisan fights over Supreme Court nominations (e.g., Gibson and Caldeira 2009; Krewson 2022)—can also undermine judicial legitimacy by promulgating the view that the Court is “just another political institution” (see Gibson and Nelson 2017). Direct elite attacks on institutions have also been addressed as possible causes of diminished institutional legitimacy (see Nelson and Gibson 2019, Kromphardt and Salamone 2021; but see Armaly 2018).

Many suspect that momentous, block-buster decisions can affect the Supreme Court’s legitimacy, although the evidence on this score is quite limited, in part, because such decisions are rarely produced by the Court. What seems to be a momentous decision at the time (e.g., Obamacare—*National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)) may not in fact influence the legitimacy beliefs of most Americans, especially in the long term (Gibson 2015). And while many observers predicted that the Court’s 2000 ruling in *Bush v. Gore*, awarding the presidency to the Republicans, would be legitimacy-threatening, all empirical analysts agree that no such threat materialized.⁵

⁵ Gibson, Caldeira, and Spence (2003) found no evidence whatsoever that the court’s legitimacy took a dip owing to its decision. Other scholars report similar findings. For instance,

One major reason why controversial decisions have such limited consequences for institutional legitimacy is put forth by Positivity Bias. According to this theory, unwanted decisions that are accompanied by the legitimizing symbols of judicial authority are accepted because the symbols evoke pre-existing pro-legitimacy considerations that bias information processing in favor of legitimacy and acceptance (e.g., Gibson, Lodge, and Woodson 2014; Gibson and Nelson 2018; Nielsen, Robinson, and Smyth 2020). If the “reservoir of goodwill” is mobilized by symbols, then even unwelcome decisions do little damage to the court.

The Theory of Institutional Legitimacy also hypothesizes that legitimacy matters for several, related purposes. First, legitimacy implies an obligation to comply with institutional decisions (or at least to accept and not challenge the decision).⁶ Second, the decision itself can be challenged, with efforts focused on overturning or reversing the ruling (e.g., support for a national statutory right to abortion). Finally, and at the most extreme level, the authority of the institution itself can be directly questioned (e.g., “court curbing”—see Bartels and Johnston 2020). This might mean support for changes to the structural integrity of the institution, ranging from jurisdiction stripping to altering

Price and Romantan (2004, 953, emphasis added) draw the following conclusion from their research: “On the whole our findings are consistent with the hypothesis that the election — even with the vituperative disputes in its wake — served to *boost* public attachment to American political institutions.” Others (e.g., Yates and Whitford 2002, Kritzer 2001, Gillman 2001, and Nicholson and Howard 2003) reach a similar conclusion.

⁶ A classic recent example took place in Kentucky, where Kim Davis, the former County Clerk for Rowan County, refused to issue marriage licenses to any couples beginning in the summer of 2015 as a way of avoiding granting marriage licenses to same-sex couples (see Heyman 2015).

the size of the Court or the tenure of its judges (e.g., Feldman 2020). Institutions without a “reservoir of goodwill” must worry about their decisions, especially their unpopular decisions, provoking these sorts of backlashes.

The Challenges of *Dobbs* to Legitimacy Theory: Hypotheses

My purpose in this research is to investigate the consequences of the *Dobbs* decisions for the Court’s institutional legitimacy. Based on Legitimacy Theory and Positivity Bias, I address several hypotheses about variability in popular support for the U.S. Supreme Court.

The Reservoir of Goodwill: The main “null” hypothesis of this research is that, based on the notion that institutional legitimacy provides a “reservoir of goodwill” and that the impact of unfavorable decisions is mitigated by exposure to judicial symbols, opposition to the *Dobbs* ruling will be only weakly connected or even disconnected to unwillingness to extend legitimacy to the Court, just as *Bush v. Gore* and, according to some analyses, the Court’s initial Obamacare decision had few lasting negative consequences (but see Christenson and Glick 2015). Therefore:

H₁: The key expectation of Legitimacy/Positivity Theory is that *Dobbs* did little to alter the Supreme Court’s legitimacy.

Attentiveness to the Decision: In the context of judicial research, Unger (2008) is particularly insistent on the need to measure not just exposure to court decisions but understandings of them as well.⁷ In one of the few analyses of knowledge of court decisions,

⁷ Consequently, some scholars rightly describe “exposure” to court decisions as whether the respondent “could have” heard about and understood the court decision and court decisions as “immediately observable” not “immediately observed” (Christenson and Glick 2019, 647, 638).

Hitt, Saunders, and Scott (2019) document considerable variability in public awareness of Supreme Court rulings across court decisions, types of people, and the degree of coverage by the mass media (see also Malhotra and Jesse 2014). Moreover, as the Elaboration Likelihood Model (ELM) teaches us (see Kitchen et al. 2014 and Holt 2018 for discussions), to the extent that there is a connection between opposition to the ruling and legitimacy, it will be conditional upon the degree of attentiveness and exposure to the decision. Therefore:

H₂: Attentiveness is a necessary condition for policy opposition and legitimacy to be linked.

Issue Types: In existing research on the impact of Court decisions on institutional attitudes, little attention has been given to variability across issue types (but see Hoekstra 2003). Nevertheless, it seems reasonable to expect that the reactions people have to Court rulings on different types of issues can differ. As Skitka and her colleagues have shown (e.g., 2021), political preferences deeply grounded in understandings of “right” and “wrong” are especially resistant to compromise and acceptance of the unwanted rulings of authorities.⁸ Attitudes toward a ruling on same-sex marriage might evoke religious dogma and beliefs for many (Newport 2012), whereas few (but not no one) view health care or intellectual property rulings in the same terms. Focusing on attitudes toward physician-assisted suicide (PAS), this is exactly what Skitka, Bauman, and Lytle (2009) found:

⁸ Skitka and her colleagues (e.g., 2021) have pioneered the study of political attitudes that are grounded in moral concerns (see also Ryan 2014, and Ryan and Aziz 2021). Such attitudes have a number of unique attributes, including unwillingness to defer to authorities (see Skitka, Bauman, and Lytle 2009). Abortion preferences are often considered to be a prime example of such attitudes.

In essence, people used their moral beliefs about physician assisted suicide as a litmus test of the legitimacy of the Supreme Court: The Court was seen as even more legitimate after ruling in favor of the Oregon's Death with Dignity Act by morally convicted supporters but was seen as less legitimate by morally convicted opposers of physician assisted suicide after than before the Court ruled in this case (Skitka et al. 2018, 14).

Because issues grounded in moral or religious considerations seem particularly resistant to negotiation and compromise (Ryan 2017), I hypothesize that unwanted rulings on such issues may be particularly difficult for some to accept.

H3: To the extent that there is a relationship between opposition to the ruling and legitimacy, it will be conditional upon the degree to which abortion preferences are grounded in moral concerns, with stronger moral content being associated with a strengthened relationship between attitudes toward the ruling and legitimacy.

Partisan Polarization: A key feature of practically everything about politics in the contemporary U.S. is polarization. Some literature on polarization suggests that the Supreme Court's legitimacy has not become polarized (for example, Gibson 2007, 2017), although there is certainly debate on this issue (see Bartels and Johnston 2020; Hasen 2019; Armaly and Enders 2022; Rogowski and Stone 2021; Zilis and Blandau 2021; Krewson 2022). As suggested by theories of polarization and motivated reasoning, willingness to extend legitimacy to the Court may recently have become politically polarized, with the consequence that:

H4: Willingness to extend legitimacy to the Court is closely connected to one's partisan attachments.

Performance Evaluations: All analyses of the legitimacy of the U.S. Supreme Court recognize that some relationship exists, as it should, between specific support and diffuse support (e.g., Gibson and Nelson 2015, Nelson and Gibson 2020; Bartels and Johnston 2013). Some regard performance evaluations as simply satisfaction or dissatisfaction with

the rulings of the Court, but others examine broader ideological disagreements with the institutions (Bartels and Johnston 2013), and some are even willing to embrace matters such as procedural factors, including transparency (see, for example, Grimmelikhuijsen and Klijn 2015), as elements of performance evaluations. Therefore:

H5: Those generally dissatisfied with the performance of the Court and/or who perceive a greater ideological distance between themselves and the Court are expected to extend less legitimacy to the U.S. Supreme Court.

Future Rulings: Some believe that *Dobbs* may be only the tip of the iceberg, with future rulings anticipated from the Court on broader issues of privacy, including, for example, privacy as pertains to sexual activity, contraception, and even marriage. Based on Gibson and Nelson's (2015) "New Math of Legitimacy," I consider this possibility by simulating the consequences for legitimacy of possible new Court rulings on abortion rights. In particular:

H6: Under the assumption that the Court may not be finished with its rulings on abortion rights, I hypothesize that more extreme pro- and anti-abortion rulings will further undermine the legitimacy of the Court.

This paper unfolds as follows. First, I introduce evidence from a representative national survey conducted in July 2022 on how the American people perceive and evaluate the Supreme Court and its decision (for technical details on the 2022 survey, see Online Appendix B). Second, using pre- and post-*Dobbs* surveys, I show how support for the Court has changed between July 2020 and July 2022. Third, I then test the various micro-level hypotheses by examining the correlates of willingness to extend legitimacy to the Court. Finally, I investigate the likely consequences of future Court abortion/privacy rulings that

are opposed by either those favoring abortion rights or by those rejecting abortion rights. In general, virtually all the empirical evidence I adduce in this paper runs contrary to existing research regarding the breadth, depth, and stability of the Court’s institutional legitimacy.

Preliminaries

My *Dobbs* survey found in July 2022 only a tiny proportion of the respondents saying they were not aware of the *Dobbs* ruling (7.6%), even if only 51.7% said they had heard “a lot” about the ruling (with the remaining 40.7% hearing only “a little” about it—for the question wording of this and other items, see Online Appendix C). The decision was unpopular with most American people, with 62.3% disapproving of it while 37.7% supported it. Most believe abortion should be legal at least in some contexts (68.1%), while a minority (31.9%) say it should be illegal in all or most situations. When it comes to investing the issue with moral concerns, nearly one-half (49.6%) ascribe high moral content to their abortion preferences, another 26.1% assign medium moral content, and 24.3% claim little moral content. Perhaps not surprisingly, those who oppose abortion are considerably more likely to believe the abortion issue is a moral one (see Figure E.1 in Online Appendix E).

Measuring Diffuse Support and Its Changes

Widespread agreement has been reached among judicial scholars about how to measure diffuse support (but see Bartels and Johnston 2020; Badas 2019); following Gibson, Caldeira, and Baird (1998), a standard set of indicators has become quite widely used. In this instance, constraints on the length of the survey required that only three of the conventional six items be included. The three items were selected via an analysis of July 2020 nationally representative survey data as the best

(most valid and most discriminating) indicators of the concept (see Online Appendix C for the question wording of all items analyzed in this paper and evidence of the validity of the three-item index of diffuse support).

Because these questions have been asked in earlier surveys, Table 1 reports data on these indicators of diffuse support, beginning with my July 2020 nationally representative NORC survey and proceeding through two surveys during the election/insurrection period and culminating in the July 2022 survey (see Online Appendix B for details on each of the surveys reported in Table 1). In addition to the replies to the individual indicators, I report the results from three summary indices: the average answer to the three questions, the average number of pro-legitimacy responses given, and the average number of anti-legitimacy responses provided.⁹

The general finding of extant research at the aggregate level is that Supreme Court legitimacy changes little (see, for example, Nelson and Tucker 2021).¹⁰ *That is not what these data show.* Consider the responses to the first item in the table—“do away with the Court.” While the pre-*Dobbs* surveys show strong majorities rejecting this view, the 2022 percentage drops below

⁹ Despite including only three indicators, the item set is quite reliable (Cronbach’s alpha = .84) and is strongly unidimensional (from a Common Factor Analysis, eigenvalue₂ = .42), with very strong loadings of all three items on the first extracted factor (item loadings range from .76 to .86). I scored the resultant support index to vary from 0 to 1 (low to high diffuse support), just as all other analytical variables in this analysis are so scored.

¹⁰ Care should be taken not to confuse diffuse support for an institution with performance satisfaction, which does oscillate over time. For a revealing analysis of the relationship between job approval and partisanship, see Bartels and Kramon 2022.

Table 1. Change in Attitudes Toward the U.S. Supreme Court, 2020—2022

	Percentages (Total to 100 %)			Mean	Std. Dev.	N
	Not Supportive of the Institution	Uncertain	Supportive of the Institution			
Do away with the Court (1 —> 5 range)						
2020, t ₁	14.1	24.9	60.9	3.7	1.1	1000
2020, t ₂	8.5	29.3	62.2	3.8	1.0	1024
2021, t ₃	11.3	24.3	64.4	3.8	1.1	2021
2022, t ₄	18.9	32.8	48.3	3.5	1.2	1052
Remove judges who rule against majority (1 —> 5 range)						
2020, t ₁	22.1	39.2	38.7	3.3	1.1	999
2020, t ₂	19.5	37.8	42.7	3.3	1.0	1022
2021, t ₃	18.8	31.8	49.4	3.4	1.1	2007
2022, t ₄	29.6	39.1	31.3	3.1	1.2	1054
Make Court less independent (1 —> 5 range)						
2020, t ₁	33.8	32.5	33.7	3.1	1.2	1005
2020, t ₂	28.0	33.1	38.9	3.2	1.2	1026
2021, t ₃	29.7	28.5	41.8	3.2	1.2	2004
2022, t ₄	29.6	39.1	31.3	2.9	1.3	1046
Average Support (0 —> 1 range)						
2020, t ₁	—	—	—	.58	.23	1004
2020, t ₂	—	—	—	.61	.22	1026
2021, t ₃	—	—	—	.62	.23	2007
2022, t ₄	—	—	—	.53	.27	1048
Average Items—Support for Court (0 —> 3 range)						
2020, t ₁	—	—	—	1.33	1.15	1004
2020, t ₂	—	—	—	1.44	1.21	1026
2021, t ₃	—	—	—	1.56	1.18	2007
2022, t ₄	—	—	—	1.09	1.19	1048

Average Items—Not Support for the Court (0 —> 3 range)						
2020, t ₁	—	—	—	.70	.93	1004
2020, t ₂	—	—	—	.56	.86	1026
2021, t ₃	—	—	—	.59	.86	2007
2022, t ₄	—	—	—	.53	.27	1048

Notes:
The propositions (asked with a five-point Likert response set) are:

Do away with the Court: 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 Court altogether.

Remove judges who rule against majority: Justices on the U.S. Supreme Court who consistently make unpopular decisions should be removed from their position as Justice.

Make Court less independent: The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want.

For graphic depictions of these changes see Figure E.4 in Online Appendix E.

Sources: t₁: NORC AmeriSpeak, July 2020
t₂: NORC AmeriSpeak, December 2020
t₃: NORC AmeriSpeak, March 2021
t₄: NORC AmeriSpeak, July 2022

50%, and this is coupled with a substantial increase in uncertain responses. The 18.9% who have turned against the Court may be only somewhat larger than shown in the earlier surveys—but it is larger—so the most important conclusion from these data is that certain support for the Court has undoubtedly declined. One can also confirm this with the average number of supportive (pro-legitimacy) replies, which, in July 2022, dropped to an average of only 1.1 (of 3). *Fully 45.7% of the July 2022 respondents gave not a single pro-legitimacy reply to the three items* (data not

shown).

While my purpose here is not to analyze the consequences of the Barrett nomination/confirmation, I note that the Barrett vote took place between the t_1 and t_2 surveys reported in Table 1. The data suggest that, if anything, support for the Court *increased* over the course of that period; certainly, it did *not* decrease (see Krewson 2022 for somewhat contrary evidence; see also Krewson and Schroedel 2020, 2022). This finding provides useful perspective for interpreting the change from pre- to post-*Dobbs*.

Connecting Evaluations of *Dobbs* with Institutional Support

I next examine the simple bivariate relationship between assessments of the decision and institutional support (**H₁**). In general, specific and diffuse support are usually correlated but not particularly strongly (indeed, were they strongly connected, Legitimacy Theory would largely collapse—for a discussion see Nelson and Gibson 2018, 2020). Under the reasonable assumption that performance evaluations affect levels of ascribed legitimacy (see Gibson, Pereira, and Ziegler 2017), Figure 1 reports the relationship between evaluations of the *Dobbs* decision and diffuse support for the Court.

Figure 1 depicts an atypically strong relationship ($r = -.46$): those who approve of the Court's ruling in *Dobbs* are considerably more willing to extend legitimacy to the Court than

those who disapprove of the decision.¹¹ I do note, however, that the relationship seems to be disproportionately influenced by those who “strongly approve” of the decision. As the figure shows, those who somewhat approve and somewhat disapprove differ little, even if those who strongly disapprove extend significantly less legitimacy to the Court. Still, this is an unusually strong relationship.

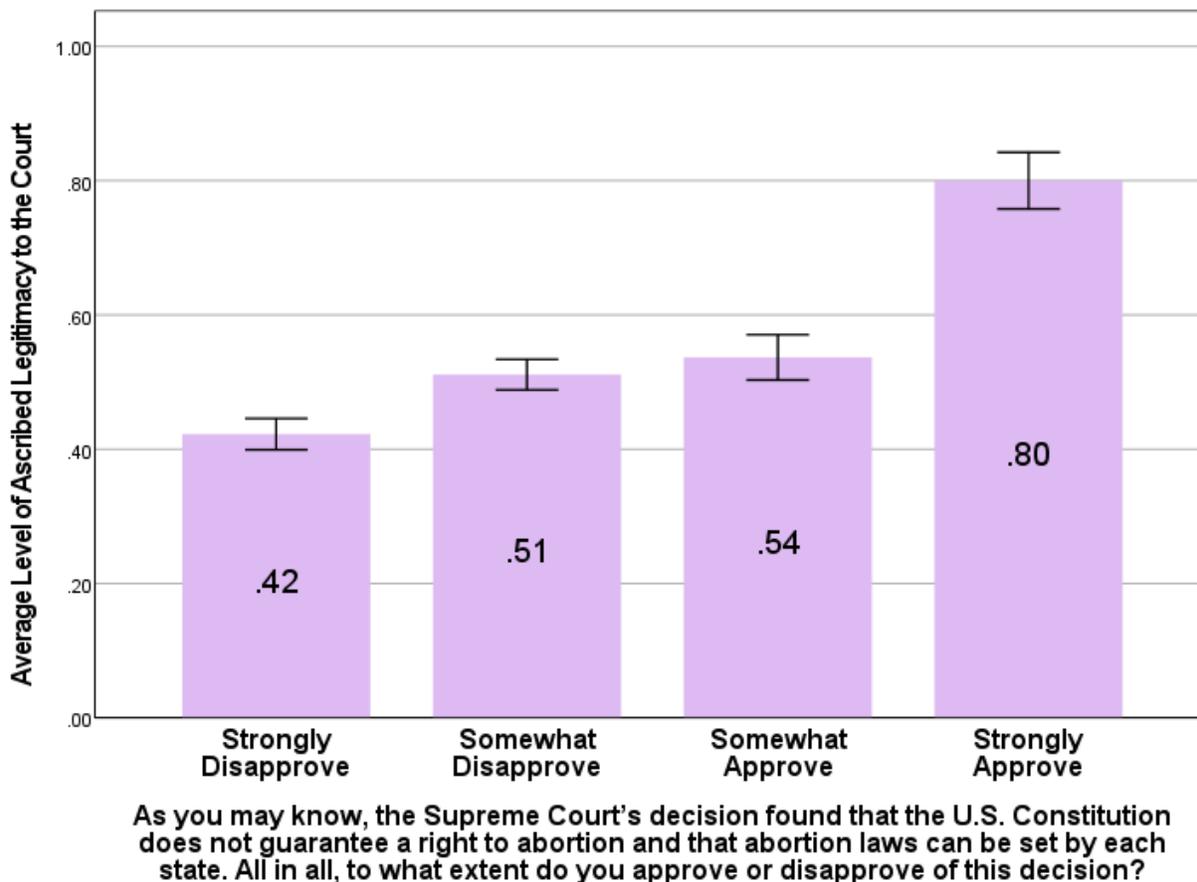
Multivariate Analysis

Before drawing robust conclusions about the relationship between *Dobbs* views and Court legitimacy, multivariate analysis is, of course, essential. Given that it is conventional in the literature to assume that specific support predates diffuse support (in part, because it is often updated by contemporaneous events, whereas diffuse support is relatively obdurate), Table 2 reports the predictors of institutional legitimacy using a set of nested equations.¹² Equation I

¹¹ In contrast, in his re-analysis of the Bartels and Johnston experimental data, Gibson (2015, 92) reports that the correlation between institutional support and satisfaction with a Court decision on government surveillance (“winners”) versus dissatisfaction (“losers”) is only .14 (which is statistically significant with an N of 1,052).

¹² I present the multivariate analysis in this fashion so that readers can see the effects of the main variables of interests before and after adding additional control variables. Of course, Model V is the most fully specified model, meaning that the coefficients in this equation are the least affected by omitted variable bias.

Figure 1. *Dobbs* Assessments and Institutional Legitimacy, July 2022



Notes:

The legitimacy index is scored to range from 0 to 1, with higher scores representing greater legitimacy.

95% confidence intervals around the means are shown.

N = 1012

reports the simple *Dobbs* relationship; Equation II adds abortion attitudes; Equation III introduces additional controls for specific support to the equation; Equation IV adds ideological and partisan identifications; and Equation V rounds out the analysis by including various

demographic control variables.

Equation I includes three variables: approval of the *Dobbs* decision, awareness of the decision, and the interaction of awareness and approval—under the hypothesis that approval is unimportant for those few not previously cognizant of the decision (**H₂**).¹³ The data confirm that approval of the *Dobbs* ruling and institutional support are closely connected. Among the most aware (larger in number), the coefficient linking diffuse and specific support is .41; among the least aware (smaller in number), the coefficient is -.01, just as expected.¹⁴ Generally, there is also a weak tendency for those more aware of the decision to extend *less* legitimacy to the Court (**H₂**), which seems to run counter to the Gibson and Caldeira (2009) “to know them is to love them” nearly universal finding (although that finding usually pertains to general knowledge of the Court rather than knowledge of any particular decision). Note as well that, across the five equations, the effect of *Dobbs* approval on legitimacy is weakened slightly by the introduction of additional predictors, but still remains highly statistically and substantively significant in Equation V, therefore supporting exactly the same substantive claims.

¹³ Adding the interaction term to the two-variable equation results in a highly statistically significant increase in R^2 , from .22 to .25, indicating that the variability in ruling awareness (reported above) is substantively significant. On analysis of interactions, see Kam and Franzese 2007.

¹⁴ Figure E.2 in Online Appendix E depicts the interactive relationship. Without the interaction term, the coefficient for *Dobbs* opinions is .33 ($p < .001$).

Table 2. Predictors of Institutional Support for the U.S. Supreme Court

Predictor	Equation I		Equation II		Equation III		Equation IV		Equation V	
	b	s.e.	b	s.e.	b	s.e.	b	s.e.	b	s.e.
Approve of <i>Dobbs</i>	-.01	.06	-.07	.06	-.07	.06	-.07	.06	-.07	.06
Aware of <i>Dobbs</i>	-.09***	.04	-.07*	.04	-.04	.04	-.04	.04	-.09**	.03
Approval/Awareness Interaction	.42***	.07	.39***	.07	.33***	.07	.33***	.07	.29***	.07
Abortion Attitude	—	—	.03	.06	.07	.06	.07	.06	.04	.05
Moral Content	—	—	.25***	.05	.28***	.05	.28***	.05	.27***	.05
Attitude/Moral Interaction	—	—	-.30***	.07	-.32***	.07	-.32***	.07	-.30***	.07
Specific Support	—	—	—	—	.11***	.02	.11***	.02	.12***	.02
Ideological Distance	—	—	—	—	-.00	.03	-.00	.03	.01	.03
Ideological Identification	—	—	—	—	—	—	-.00	.04	-.01	.03
Partisan Identification	—	—	—	—	—	—	.00	.03	-.02	.03
Gender	—	—	—	—	—	—	—	—	-.06***	.01
Age	—	—	—	—	—	—	—	—	.10***	.03
Level of Education	—	—	—	—	—	—	—	—	.09***	.03
Income	—	—	—	—	—	—	—	—	.10***	.03
Home Ownership	—	—	—	—	—	—	—	—	-.01	.02
Majority Race	—	—	—	—	—	—	—	—	.07***	.02
Marital Status	—	—	—	—	—	—	—	—	-.01	.02
Employed	—	—	—	—	—	—	—	—	-.01	.02
Metropolitan Residence	—	—	—	—	—	—	—	—	-.00	.02
Internet Access	—	—	—	—	—	—	—	—	.07**	.02
<i>Equation</i>										
Intercept	.48***	.03	.45***	.05	.37***	.06	.37***	.06	.23***	.06
Standard Deviation —										
Dependent Variable	.27		.27		.27		.27		.27	
R ²	.25		.29		.32		.32		.40	
Adjusted R ²	.24		.28		.31		.31		.38	
Standard Error of Estimate	.24		.23		.23		.23		.21	
N	1012		1012		1012		1012		1012	
Significance of R ² Change	≤ .001		≤ .001		≤ .001		> .05		≤ .001	

Notes:

Significance of unstandardized OLS regression coefficients: *** $p \leq .001$ ** $p \leq .01$ * $p \leq .05$

All variables are scored to range from 0 to 1. For their distributions, see Online Appendix D.

b = unstandardized regression coefficient

s.e. = the standard error of the unstandardized regression coefficient

In Equation II, abortion attitudes are introduced, with an indicator of whether the attitudes are grounded in moral concerns (see Online Appendix C) and an interaction term between preferences and moral content. The interactive hypothesis is that the greater the moral content of the preference, the stronger will be the effect of the preference on legitimacy (**H3**).

The interactive hypothesis receives considerable support.¹⁵ When the moral content of abortion preferences is at its lowest score (0), abortion attitudes are not connected to legitimacy ($b = .03$). When moral content is at its highest level (1; for about one-half of the respondents), the effect of abortion attitudes is supercharged, with $b = -.27$. Holding pro-abortion preferences with greater moral content is associated with lower levels of legitimacy, which strongly supports the hypothesis.

Some observers seem to believe that *Dobbs* was the “straw that broke the camel’s back.” That is, as the Court has moved significantly to the right—and perhaps more important,

¹⁵ Adding the interaction term to the five-variable equation results in a highly statistically significant increase in R^2 , from .27 to .29 ($p < .001$). Figure E.3 in Online Appendix E depicts the interactive relationship.

consistently to the right, meaning that liberal constituents were registering fewer and fewer “wins” in the Court’s docket (see Jessee, Malhotra, and Sen 2022)—liberals were becoming increasingly dissatisfied with the Court. Consequently, I added to the equation a recommended measure of specific support and a measure of the perceived ideological distance between the respondent and the Court (based on measures of the respondent’s own ideology and perceptions of where the Court stands—**H5**).¹⁶ Online Appendix C reports how these concepts are measured.

I first note that adding these variables to the equation does little to dampen the effects of the *Dobbs* variables and abortion attitudes, supporting the view that general performance dissatisfaction and objections to specific rulings are not necessarily the same thing (Gibson 2015). The data show that those who rate the Court’s opinions as “about right” extend significantly more legitimacy to the Court, even beyond the effect of *Dobbs*. The relationship is noteworthy but not strong. It is also noteworthy that the ideological distance between the respondent and the Court is entirely unrelated to institutional support in the multivariate case.

I next added the measures of ideological and partisan identification to the equation (see Equation IV), which fails to produce a statistically significant boost in the amount of explained variance in legitimacy (**H4**). Once *Dobbs* evaluations, abortion preferences, and specific support are in the equation, neither ideological nor partisan identifications are in any way connected to institutional legitimacy. It is worth repeating that this is even true of party identification (but see

¹⁶ Nelson and Gibson 2020 discuss the measurement of specific support in considerable detail. I adopt their recommendations. In Online Appendix C, the measures are presented.

below).

Perhaps a little unexpectedly, the addition of the demographic variables to the fairly complete equation substantially increases the amount of explained variance in diffuse support.¹⁷ Particularly noteworthy are the coefficients for gender, age, level of education, income, and race (whether majority race or not), with more institutional support found among men, older people, the better educated, wealthier people, and Whites (and, to a lesser degree, those with access to the internet)—and this is, of course, while holding partisan and ideological identifications constant. None of these relationships is exceptionally strong, even if they are distinguishable from zero, and all pale in comparison to the other major predictors in the equations.¹⁸

¹⁷ Like other research (e.g., Krewson 2022), space limitations in the questionnaire made it impossible to ask the battery of indicators measuring support for democratic institutions and processes. In Online Appendix F, I present evidence suggesting that my inability to include measures of democratic values in the equations in Table 2 is unlikely to bias the observed coefficients for the other predictors.

¹⁸ For a discussion of how multicollinearity might (but does not) affect the results reported in Table 2 see Online Appendix F. Furthermore, if I were to estimate an Equation “V.II,” in which ideological identification and ideological distance were removed from the equation—so as to give specific support and party identification their best chance to account for some of the variance in diffuse support—the regression coefficients for neither specific support

In sum, institutional support for the U.S. Supreme Court is most closely associated with those who are aware of the *Dobbs* decision and who approve of it, those who hold morally grounded anti-abortion attitudes, those who are generally satisfied with the performance of the Court, and older, male, and White Americans. That *Dobbs* assessments are so closely associated with diffuse support even in an equation that can explain 40% of the variance in legitimacy attitudes is notable—and ominous for the Court.

Is Partisanship Really Irrelevant?

In this era of partisan polarization in the United States, some might not be convinced by the coefficients in Table 2 indicating that partisan (and ideological) identifications have nothing to do with willingness to extend legitimacy to the Supreme Court. Perhaps it is worthwhile to have a closer look at the connections between partisanship and legitimacy.

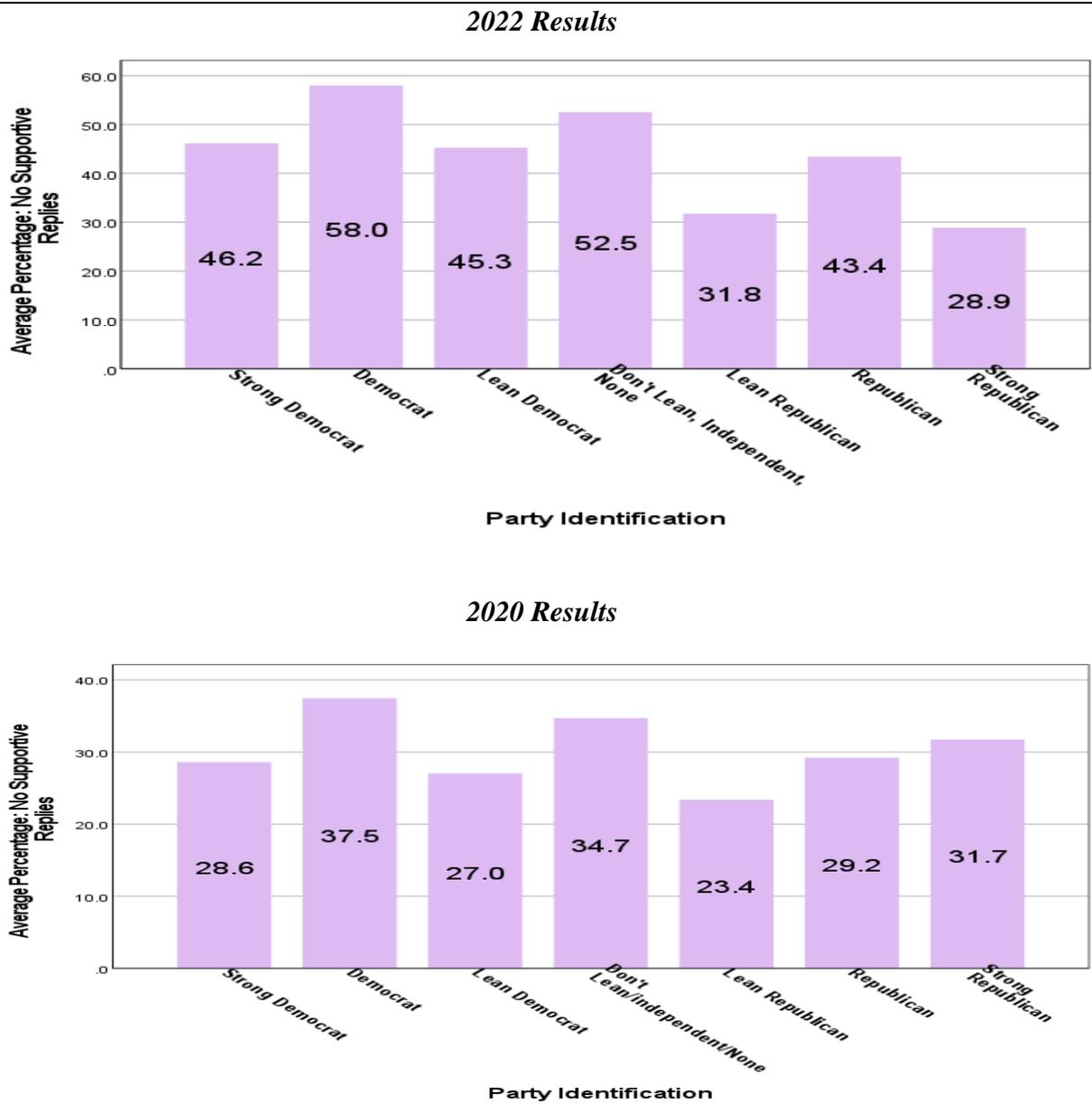
In fact, the data reveal a quite substantial change in the relationship between party identification and diffuse support in the 2022 *Dobbs* data compared to the relationship in the 2020 FATS data (see Figure 2). In 2020, no bivariate relationship whatsoever existed; in 2022, a moderate relationship materialized. In 2022, Democrats were significantly more likely to express no support for the Court than Republicans. That the relationship is not stronger is in part a function of the (relatively small number of) respondents without any party attachments. Still, it is

nor partisan identification would change from those reported in Equation V in Table 2 (and R^2 would remain at .40).

noteworthy that, while 58.0% of Democrats express no support for the Court, the figure for Republicans is 43.4%. Obviously, this is neither a trivial nor strong relationship. Finally, note that for every type of party identification except for strong Republicans, opposition to the Court increased between 2020 and 2022. Among Republicans, for example, 29.2% extended *no support* to the Court in 2020; this percentage increased to 43.4% in 2022. Thus, opposition to the Court increased among the types of partisan identifications found among the vast majority of the American people.

I have carefully considered the point at which the regression coefficient for party identification becomes insignificant (as is shown in all models in Table 2). In a stripped-down hierarchical regression, party identification *by itself* is statistically significant, and remains significant when ideological self-identification and abortion attitudes are added to the equation. However, when attitudes toward the *Dobbs* decision are added next, the coefficient for party identification become insignificant. Moreover, when *Dobbs* opinions are added first to the equation, party identification is never statistically significant. What these analyses seem to indicate is that substantive opinions on the policy content of the *Dobbs* ruling (abortion) have greater consequences for institutional support than does simple partisanship. Partisanship is connected to satisfaction with the *Dobbs* decision, but partisanship by itself does not seem to be a driving force in shaping legitimacy attitudes; instead, the force seems to be reactions to the decision by the Supreme Court to abrogate *Roe*. These supplemental analyses should provide greater confidence in the findings reported in Table 2 (above).

Figure 2. The Relationship of Party Identification and Institutional Support, Pre- and Post-*Dobbs*



Notes:

2022— Based on the full index of support for the Court: $r = .24$, $p < .001$. $N = 1012$
 2020— Based on the full index of support for the Court: $r = .05$, $p < .007$. $N = 870$

After Dobbs

The Court's decision in *Dobbs* was not the most extreme anti-abortion rights position possible. While the justices found that there is no federal constitutional protection for abortion rights, they could have ruled that abortions deny constitutional rights and therefore should be banned throughout the country (e.g., by declaring fetal rights—see Zernike 2022). *Dobbs* was in keeping with a well-planned incremental attack on abortion rights¹⁹; it is not yet known what the next step in that crusade will be.

I explored the question of “what’s next” in the survey via questions about the likely consequences of future Court rulings on abortion/privacy. Those opposing the Court’s *Dobbs* decision were asked whether the Court should be “done away with” should a new decision come down outlawing abortion in all circumstances. *Almost two-thirds (63.7%) of Dobbs opponents supported jettisoning the Court* under this scenario. For those who supported *Dobbs*, I asked about a new decision that reversed *Dobbs* and restored the right to an abortion. Only 28.0% of these respondents would support doing away with the Court. Clearly, a strong asymmetry exists, perhaps related to the fact that many of those “losing” on *Dobbs* have also lost on a series of other salient Supreme Court decisions (see Jessee, Malhotra, and Sen 2022). And it may also be somehow connected to the finding that those opposing abortion are more likely to ground their position in personal morality, although the data are insufficient to explore why *anti-abortion*

¹⁹ Recall that Alito’s opinion seemed to follow an outline he drafted decades before on an incremental strategy for over-turning *Roe* (Savage 2022).

Americans are so much less likely to support punishing the Court for an unwelcomed abortion decision. Additional research is clearly necessary.

The “New Math” of Legitimacy

What would be the overall consequence of a new Court ruling banning abortions altogether? The survey data can provide some insight into that question (**H₆**).

As noted above, I asked about a new ruling that would outlaw abortion in all circumstances. By assumption, those who believe that abortion should be illegal *in all cases* would approve of this decision; at least some of those who believe that abortion should be illegal *in most cases* would probably approve of the ruling as well. To these respondents, I add those pro-abortion people who said they would not support doing away with the Court should it make a ruling outlawing abortion—I will refer to these as those who *accept* the decision. Assuming that only those who would ban abortion *in all cases* would approve of this decision, I find that 42% of the respondents would *either approve of or accept* a total ban on abortion.²⁰ Assuming that those who would ban abortion in most *or* all circumstances would approve of the hypothetical decision, the comparable figure rises to 57%.

Focusing on a ruling that would in essence overturn *Dobbs*, there is less ambiguity in abortion opinions—I can safely assume that those who favor allowing abortions in all *or* most circumstances would approve of the hypothesized decision. Adding in those anti-abortion

²⁰ This excludes from the denominator those who would ban abortion in most cases.

respondents who would accept a decision reversing *Dobbs*, this new ruling would be acquiesced to (approved of or accepted) by 91% of the respondents.

From this “simulation,” I conclude that the overwhelming majority of Americans—nearly all—would not withdraw legitimacy from the Supreme Court were it to reverse *Dobbs*. Somewhere between 42% and 57% would support the Court were it to issue a new decision banning all abortions—either because they approve of such a decision or because of unwillingness to punish the Court for issuing an unwelcomed decision. From the perspective of the “new math of legitimacy,” the Court clearly has the leeway to roll back *Dobbs* but less leeway to expand the anti-abortion rights decision.

At the same time, however, it seems much more likely that the current Court would take one more step away from abortion rights than that it would restore *Roe*. Extending and expanding that ruling, however, seems likely to generate considerable risk for the institution, with somewhere around one-half of the American people being willing to get rid of a fully anti-abortion rights Court.²¹ And this analysis does not, of course, pursue the expressed preference of Justice Thomas to roll back broader privacy rights unrelated to abortion; such a radical course might well evoke even stronger legitimacy challenges to the institution.

²¹ This contrasts stunningly, by the way, with the 18.9% figure reported in Table 1 (above) who, in the abstract and with a somewhat different question, would approve of doing away with a court that repeatedly goes against public opinion.

Discussion and Concluding Comments

The obvious Achilles Heel of this research is that I cannot determine whether any lost legitimacy persists. Mondak’s “values-based regeneration” theory suggests that institutional legitimacy is likely to bounce back over time.²² Given the magnitude of the relationship between judgments of the decision and legitimacy, however, this would require a great deal of bouncing. While the survey was fielded some time after the decision was announced, public debate over it and the Court had dissipated only slightly at the time of the interviews. Owing to the importance of the abortion issue to many Americans—and a likely prominent role for the issue in the 2024 presidential election—my suspicion is that the Court’s legitimacy will not soon rebound, although I have no direct empirical evidence to bolster that suspicion.²³

Abortion as an issue may be *sui generis* given that about one-half of Americans ground their abortion attitudes in moral considerations.²⁴ But there may well be other issues that many

²² For an analysis that fails to support the democratic values and the “regeneration hypothesis” see Bartels, Horowitz, and Kramon 2022.

²³ Supporting this view is evidence that elites of various stripes (but mainly Democratic) did not hesitate to level their most trenchant criticisms against the Court for its *Dobbs* ruling, unlike, for instance, *Bush v. Gore*, where the losing candidate called for the Court’s ruling to be accepted. Much of the Court’s seeming immunity to criticism seems to have melted away.

²⁴ It is worth reiterating that, as documented in Online Appendix A, the *Dobbs* decision was unusual, if not unique, in a panoply of ways.

regard as fundamentally connected to right and wrong (see Ryan 2014).²⁵ At present, so few types of Court rulings have been investigated that we simply do not know how many legal issues are regarded as fundamentally moral by the American people and therefore may also have unusual legitimacy-threatening potential. Moreover, the moral basis of attitudes on certain issues can change over time (as a possible example, climate change). Finally, it is worth emphasizing that my analysis shows that legitimacy is lost primarily among those holding relatively strong attitudes toward the decision. Not all issues in American politics attract this degree of attitude strength.

I also cannot be certain that the *Dobbs* decision caused anything. Virtually all studies of the impact of events—be they Court rulings, nomination fights, or elite attacks on the judiciary—fail to definitively connect the occurrence of the events to any public attitudes.²⁶ All I can reasonably concluded is that *Dobbs* and its aftermath is associated with lowered Court legitimacy compared to the pre-*Dobbs* period. My analysis is bolstered, on the other hand, by being able to connect both awareness and assessments of the decision itself to Court attitudes. The findings from the interaction of these variables are particularly informative and persuasive. Still, I cannot

²⁵ For a useful study documenting the degree to which issue attitudes vary according to moral and religious concerns see Skitka et al. 2018.

²⁶ The Elaboration Likelihood Model is just one effort to understand how events must first be recognized and then be understood before they have any psychological impact. And, of course, great (and non-random) variability typically exists in both awareness and assessments.

discount the possibility that fiery sermons from preachers (or other “two-step flow” processes) indirectly shaped Court attitudes more than the majority opinion, the concurrence, and the dissent. Indeed, the nature of the reactions to a Court decision may often be more influential in shaping public opinion than the decision itself.

At the same time, this study documents what is most likely the strongest connection between a Court ruling and institutional legitimacy of any of the numerous studies testing the hypothesis that specific support (including attitudes toward individual cases) shapes diffuse support. Some (e.g., Nelson and Gibson 2018; Nelson and Tucker 2021) have argued that not only are the effects of unwanted rulings fleeting, but they are also small indeed. That seems not to be the case with *Dobbs*.

Still, I should caution that even those applauding the decision are not overwhelmingly supportive of the Court. Of those who somewhat approve of the decision, the average number of pro-legitimacy responses (of three) is only 1.1 (in contrast to an average of 2.3 for those *strongly* approving of the decision).

My considered suspicion—supported in the analysis by the enduring effect of general satisfaction with the Court’s decisions—is that, for many, *Dobbs* may have been only the last straw. As the Court has become significantly more conservative (see Jessee, Malhotra, and Sen 2022) its liberal constituents may have become more and more disillusioned with the institution. For some, *Dobbs* may have pushed them over the edge. But prior to *Dobbs*, many seem to have already been perched very near the edge.

And what of Legitimacy Theory and Positivity Bias? First, we should remind ourselves

that Positivity Theory does not work in all contexts, as Gibson and Nelson (2018) have shown with African Americans. Second, while some believe that the influence of System 1 information processing (sub-conscious, effortless) cannot be overridden by System 2 mechanisms (conscious, effortful), Positivity Theory has not argued that the pro-legitimacy considerations evoked by judicial symbols can never be discounted in System 2.²⁷ In this instance, attitudes toward abortion seem to have had sufficient weight to override any positivity bias, unlike the Court's ruling in *Bush v. Gore* (and perhaps in other high-profile cases as well). Understanding when that sort of override will happen is certainly a topic for future research.

Gibson and his various colleagues have long argued that Supreme Court legitimacy is obdurate, difficult indeed to change in the short-term. The evidence of this paper is that they may be wrong, at least in some circumstances. If so, a Court with a super-majority of conservatives—and an emboldened simple majority of ardent conservatives—may be on a trajectory of increasing alienation from the preferences of its constituents. This has not happened often in American politics; the Court has rarely been out-of-step with the predilections of the American people (e.g., Dahl 1957). But, especially with counter-majoritarian decisions like *Dobbs* and possible extensions of *Dobbs*, the prospects today of a court crisis of the magnitude of the 1930s seem increasingly possible if not likely.

²⁷ On System 1 and System 2 information processes see Kahneman 2012, Gibson 2015, and Gibson, Lodge, and Woodson 2014.

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Online Appendices

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Online Appendix A: Reasons Why *Dobbs* May Be Unique

Support for the conclusion that *Dobbs* might be the most legitimacy-consequential ruling of our time includes:

- media coverage of the ruling was extensive, meaning that virtually all Americans were aware of the decision (Pew Research Center 2022, YouGov 2022);
- the case was decided by a divided vote, with a strong and caustic dissent (Savage 2022a);
- the decision specifically rejected a well-established precedent and challenged the theory of *stare decisis* (American Bar Association 2022);
- the votes of some of those in the majority seem to be at odds with what the justices promised at the time of their confirmations to a seat on the Court (Timm 2022);
- the decision was preceded by an unprecedented breach in the secrecy of the Court's decision-making process (Liptak 2022a);
- the majority opinion seemed to follow an outline written decades earlier by the author of the ruling on a strategy for over-turning *Roe* (Savage 2022b);
- at least one justice was already under scrutiny for being too closely involved in efforts to overturn the 2020 presidential election (Becker and Hakim 2022);
- the decision ran counter to the preferences of a majority of the American people (Blazina 2022, Brennan 2022, and YouGov 2022);
- the decision rescinded a constitutional right that had been available to the American people for almost one-half a century (Liptak 2022b);
- at least for one member of the majority, the decision (concurrence) suggested that this was just the beginning of a concerted attack on the rights of privacy, including the privacy of contraception and marital choice;
- at least for some, the ruling addressed a profound moral issue on which compromise is difficult (see Skitka et al. 2021, and the empirical results below);
- and the decision has disproportionate implications for minorities (Branigin and Chery 2022, and Simpson 2022).

Online Appendix B: The Surveys

July 2022 Post-*Dobbs* Survey (t4)

The fieldwork for the July 2022 Post-*Dobbs* Survey was conducted by NORC. Funded and operated by NORC at the University of Chicago, AmeriSpeak® is a probability-based panel designed to be representative of the U.S. household population. Randomly selected U.S. households are sampled using area probability and address-based sampling, with a known, non-zero probability of selection from the NORC National Sample Frame. These sampled households are then contacted by U.S. mail, telephone, and field interviewers (face to face). The panel provides sample coverage of approximately 97% of the U.S. household population. Those excluded from the sample include people with P.O. Box only addresses, some addresses not listed in the USPS Delivery Sequence File, and some newly constructed dwellings. While most AmeriSpeak households participate in surveys by web, non-internet households can participate in AmeriSpeak surveys by telephone. Households without conventional internet access but having web access via smartphones are allowed to participate in AmeriSpeak surveys by web. AmeriSpeak panelists participate in NORC studies or studies conducted by NORC on behalf of governmental agencies, academic researchers, and media and commercial organizations. For more information, visit AmeriSpeak.norc.org.

A general population sample of U.S. adults aged 18 and older was selected from NORC's AmeriSpeak Panel for this study. This survey was offered only in English and was administered on the web. Invitations to participate in the survey were initiated on July 28, 2022, and the last interviews were completed on August 1, 2022. In total, NORC collected 1,070 interviews.

To encourage study cooperation, NORC sent three email reminders to sampled web-mode respondents. Panelists were offered the cash equivalent of \$5 for completing the study. Interviewed respondents took 20 minutes (median) to complete the survey. NORC applied cleaning rules to the survey data for quality control by removing responses in the main study from non-eligible respondents. These respondents provided responses indicative of speeding through the survey and skipping survey questions; they were not included in the final dataset.

The data are weighted, with various factors going into the construction of the final study weight. These include: (1) panel base sampling weights, (2) final panel weights, (3) study-specific base sampling weights, and (4) nonresponse adjusted survey weights. The weighted AAPOR Response Rate #3 recruitment rate was 19.5%, with a weighted household retention rate of 77.0% and a survey completion rate of 19.8%. A weighted AAPOR Response Rate #3 cumulative response rate of 3.0% was achieved. The survey has a margin of error of 3.95%, and an average design effect of 1.74.

This survey module was part of an NORC's omnibus survey which was reviewed and approved by the NORC Institutional Review Board.

The Pre-Dobbs Surveys

t₁, July 2020 — **The 2020 Freedom and Tolerance Survey (FATS)**

The fieldwork for the 2020 Freedom and Tolerance Survey was conducted by NORC using its **AmeriSpeak®** panel. Invitations to participate in the survey were initiated on July 1, 2020, and the last interviews were completed on July 24, 2020. In total, NORC collected 1,006 interviews, 950 by web mode and 56 by phone mode.

To encourage study cooperation, NORC sent five email reminders to sampled web-mode respondents. Panelists were offered the cash equivalent of \$5 for completing the study. Interviewed respondents took 29 minutes (median) to complete the survey.¹ NORC applied cleaning rules to the survey data for quality control by removing responses in the main study from non-eligible respondents. These respondents provided responses indicative of speeding through the survey and skipping survey questions; they were not included in the final dataset.

The data are weighted, with various factors going into the construction of the final study weight. These include: (1) panel base sampling weights, (2) final panel weights, (3) study-specific base sampling weights, and (4) nonresponse adjusted survey weights. The weighted AAPOR Response Rate #3 recruitment rate was 23.6%, with a weighted household retention rate of 84.8% and a survey completion rate of 28.4%. A weighted AAPOR Response Rate #3 cumulative response rate of 5.7% was achieved. The survey has a margin of error of 4.17%, and a design effect of 1.82.

This research was approved by the [INSTITUTIONAL IRB]. The [IRB] judged this project to be in the “exempt” category owing to the fact that participation in the survey was voluntary, no harm was afflicted on the respondents, and no identifiers were connected to the database generated, among other factors.

t₂, December 2020-January 2021 — **The Pre-Insurrection Survey**

The fieldwork for the Pre-Insurrection Survey was conducted by NORC using its **AmeriSpeak®** panel. Invitations to participate in the survey were initiated on December 28, 2020, and the last interviews were completed on January 5, 2021.² In total, NORC collected 1,026 interviews.

To encourage study cooperation, NORC sent multiple email reminders to sampled web-mode respondents. Panelists were offered the cash equivalent of \$5 for completing the study. Interviewed respondents took 18 minutes (median) to complete the survey. NORC applied cleaning rules to the survey data for quality control by removing responses in the main study from non-eligible respondents. These respondents provided responses indicative of speeding through the survey and skipping survey questions; they were not included in the final dataset.

¹ The interview was divided into two modules, with the FATS questions asked first. The 29 minutes median is the total length of interview.

² Some interviews were completed after January 5, 2021, but they were not included in the database owing to the traumatic events that took place on January 6, 2021.

The data are weighted, with various factors going into the construction of the final study weight. These include: (1) panel base sampling weights, (2) final panel weights, (3) study-specific base sampling weights, and (4) nonresponse adjusted survey weights. The weighted AAPOR Response Rate #3 recruitment rate was 21.0%, with a weighted household retention rate of 80.4% and a survey completion rate of 41.5%. A weighted AAPOR Response Rate #3 cumulative response rate of 7.0% was achieved. The survey has a margin of error of 4.0%, and an average design effect of 1.94.

This research was approved by the [INSTITUTIONAL IRB]. The [IRB] judged this project to be in the “exempt” category owing to the fact that participation in the survey was voluntary, no harm was afflicted on the respondents, and no identifiers were connected to the database generated, among other factors.

t3, February/March 2021 — **The 2021 Insurrection and Impeachment Survey**

The fieldwork for the 2021 Insurrection and Impeachment Survey (IIS) was conducted by NORC using its **AmeriSpeak**® panel. Invitations to participate in the survey were initiated on February 18, 2021, and the last interviews were completed on March 10, 2021. In total, NORC collected 2,027 interviews. Included as well were oversamples of African Americans, resulting in 680 completed interviews, and active college students, resulting in 316 completed interviews.

To encourage study cooperation, NORC sent three email reminders to sampled web-mode respondents. Panelists were offered the cash equivalent of \$5 for completing the study. Interviewed respondents took 20 minutes (median) to complete the survey. NORC applied cleaning rules to the survey data for quality control by removing responses in the main study from non-eligible respondents. These respondents provided responses indicative of speeding through the survey and skipping survey questions; they were not included in the final dataset.

The data are weighted, with various factors going into the construction of the final study weight. These include: (1) panel base sampling weights, (2) final panel weights, (3) study-specific base sampling weights, and (4) nonresponse adjusted survey weights. The weighted AAPOR Response Rate #3 recruitment rate was 19.5%, with a weighted household retention rate of 75.0% and a survey completion rate of 20.1%. A weighted AAPOR Response Rate #3 cumulative response rate of 2.9% was achieved. The survey has a margin of error of 3.77%, and an average design effect of 2.99.

This research was approved by the [INSTITUTIONAL IRB]. The [IRB] judged this project to be in the “exempt” category owing to the fact that participation in the survey was voluntary, no harm was afflicted on the respondents, and no identifiers were connected to the database generated, among other factors.

Online Appendix C: Question Wording and Validity

Diffuse Support for the Supreme Court

For each of the following statements, could you indicate whether you agree or disagree with them?

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.

Justices on the U.S. Supreme Court who consistently make unpopular decisions should be removed from their position as Justice.

The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Validating the Three-Item Indicator of Diffuse Support

All surveys these days involve tradeoffs. I decided in designing this research to invest in producing a nationally representative survey rather than in a lengthier questionnaire applied to an opt-in sample. Consequently, the number of questions that could be afforded was limited.

One of the choices I made was to use a three-item measure of diffuse support for the Supreme Court rather than the conventional six-item set. I made the decision on which three items to use on the basis of analysis of the July 2020 FATS data (see Online Appendix B), in which all six items were asked.

The correlation in that survey of indices based on six and three indicators is .93, indicating a very high degree of commonality. Moreover, psychometric analysis reveals that the three-item set does not suffer from reduced reliability or from reduced validity.

Another way in which the validity of the three-item measure can be assessed is to examine whether the predictors of the three-item measure differ from the predictors of the six-item measure. In their *AJPS* article, Gibson and Nelson (2015, 169) report the results of a basic predictive model of institutional support for the U.S. Supreme Court, based on 2011 FATS data. It turns out that nearly all the predictors they employ are available in the 2020 FATS survey, with only very minor deviations in how the predictors are measured. Consequently, it is useful to compare the results of applying that model to the 2020 data, first, with the six-item index as the dependent variable and, second, with the three-item index as the dependent variable. Table C.1 reports the results.³

³ Since all variables are scored to range from 0 to 1, I exclude the standardized regression coefficients that Gibson and Nelson reported in 2015.

Table C.1. Comparing the Predictors of Two Different Diffuse Support Indices

Predictor	Six-Item Index			Three-Item Index		
	r	B	s.e.	r	b	s.e.
Ideological Disagreement	-.07	-.09***	.02	-.04	-.10***	.03
Job Performance Satisfaction	.35	.21***	.03	.29	.16***	.03
Support for the Rule of Law	.37	.19***	.03	.39	.24***	.04
Political Tolerance	.20	.10***	.02	.17	.10***	.03
Support for Liberty over Order	.36	.18***	.03	.38	.22***	.03
Court Knowledge	.41	.10***	.02	.42	.10***	.03
Party Identification	.06	.01	.02	.07	.01	.02
Age	.18	.02	.03	.21	.04	.03
Hispanic	-.07	.01	.02	-.07	.02	.02
African American	-.12	.01	.02	-.14	-.01	.02
Level of Education	.39	.13***	.02	.39	.15***	.03
Gender	-.08	-.02*	.01	-.10	-.04***	.01
Social Class (Home Ownership)	.16	-.00	.01	.19	.01	.02
Church Attendance	.10	.03*	.02	.14	.06**	.02
Whether Born Again	-.03	-.01	.01	-.01	-.01	.02
<i>Equation</i>						
Intercept		.01	.03		-.00	.04
Standard Deviation of Dependent Variable		.20			.22	
Standard Error of Estimate		.15			.17	
R ²		.40***			.40***	
N		870			870	

Notes:

Significance of unstandardized regression coefficients (b): *** $p < .001$ ** $p < .01$ * $p < .05$

All variables have been scored to range from 0 to 1 (including the dependent variables). Higher scores on the dependent variables indicate greater degrees of institutional support. The coefficients reported are the bivariate correlation coefficients, the unstandardized OLS coefficients, and the standard errors of those coefficients.

Source: Freedom and Tolerance Survey, 2020.

The primary purpose of this analysis is to determine whether the equation predicting the six-item index differs substantively from the equation predicting the three-item index. The coefficients in the table support a simple conclusion: it matters little whether the dependent variable is measured with the six-item or three-item index. Note first that the bivariate correlations are remarkably similar for the two dependent measures, with the greatest deviation found for “Job Performance Satisfaction” (.35 versus .29). Second, the regression coefficients are also quite similar. Indeed, from the point-of-view of each of the tests of whether the coefficient is distinguishable from zero, every single conclusion is the same. These results add considerable, but admittedly not perfect, confidence that it matters little that the *Dobbs* survey used a three-item indicator of diffuse support for the Supreme Court.⁴

Abortion Preference⁵

Do you think abortion should be...

- Legal in all cases
- Legal in most cases
- Illegal in most cases
- Illegal in all cases

Moral Content to Abortion Attitudes⁶

How much are your feelings about whether abortions ought to be legal or illegal throughout the United States connected to your core moral beliefs or convictions?

- Not at all
- Slightly
- Moderately
- Much
- Very much

⁴ A secondary purpose of the analyses in Table C.1 is to compare the results to those reported by Gibson and Nelson based on a 2011 survey. In terms of testing the hypotheses that the coefficients are distinguishable from zero, the 2020 data produce very similar results. Two exceptions stand out: gender and church attendance are significant predictors in 2020 but not in 2011. However, neither regression coefficient in 2020 is of substantial magnitude (recall that all variables are scored to range from 0 to 1). In terms of substantive conclusions, the 2020 results differ little from the 2011 results (including, by the way, in finding that partisan identities are not related to Court support).

⁵ This question is taken from surveys on abortion attitudes conducted by Pew.

⁶ For a discussion of how to measure the moral content of attitudes see Skitka et al. 2021. See Figure E.1 (Online Appendix E) for the relationship between abortion views and the degree of moral content.

Claiming a moral basis to one's abortion opinion is not isomorphic with the intensity of one's judgment of the Court's decision (see below). The correlation of a dichotomous measure of judgment intensity and the degree of grounding of abortion opinions in moral concerns is only .17, with stronger judgments associated with greater moral content, but not greatly so.

Awareness and Assessment of *Dobbs*⁷

How much have you heard or read about the Supreme Court decision earlier this year on abortion that overturned the 1973 *Roe v. Wade* decision?

- A lot
- A little
- Nothing at all

As you may know, the Supreme Court's decision found that the U.S. Constitution does not guarantee a right to abortion and that abortion laws can be set by each state. All in all, to what extent do you approve or disapprove of this decision?

- Strongly approve
- Somewhat approve
- Somewhat disapprove
- Strongly disapprove

Future Abortion Rulings

For abortion supporters:

If, in a future decision, the U.S. Supreme Court expands its earlier ruling that women have no constitutional right to an abortion to a new ruling outlawing abortion in all circumstances throughout the United States, would you support or oppose getting rid of the current U.S. Supreme Court and replacing it with a new court that listens much more to what the American people want?

- Strongly support
- Support
- Oppose
- Strongly oppose

For abortion opponents:

If, in a future decision, the U.S. Supreme Court replaces its earlier ruling that women have no constitutional right to an abortion with a new ruling allowing abortion in most circumstances throughout the United States, would you support or oppose getting rid of the current U.S.

⁷ These questions are taken from surveys on abortion attitudes conducted by Pew.

Supreme Court and replacing it with a new court that listens much more to what the American people want?

- Strongly support
- Support
- Oppose
- Strongly oppose

Ideological Location of the Supreme Court

In general, would you say that the U.S. Supreme Court is:

- A great deal too liberal
- A little too liberal
- About right
- A little too conservative
- A great deal too conservative

Specific Support: Generalized Satisfaction with the Court

In general, would you say that the U.S. Supreme Court is:

- Too liberal or too conservative
- About right

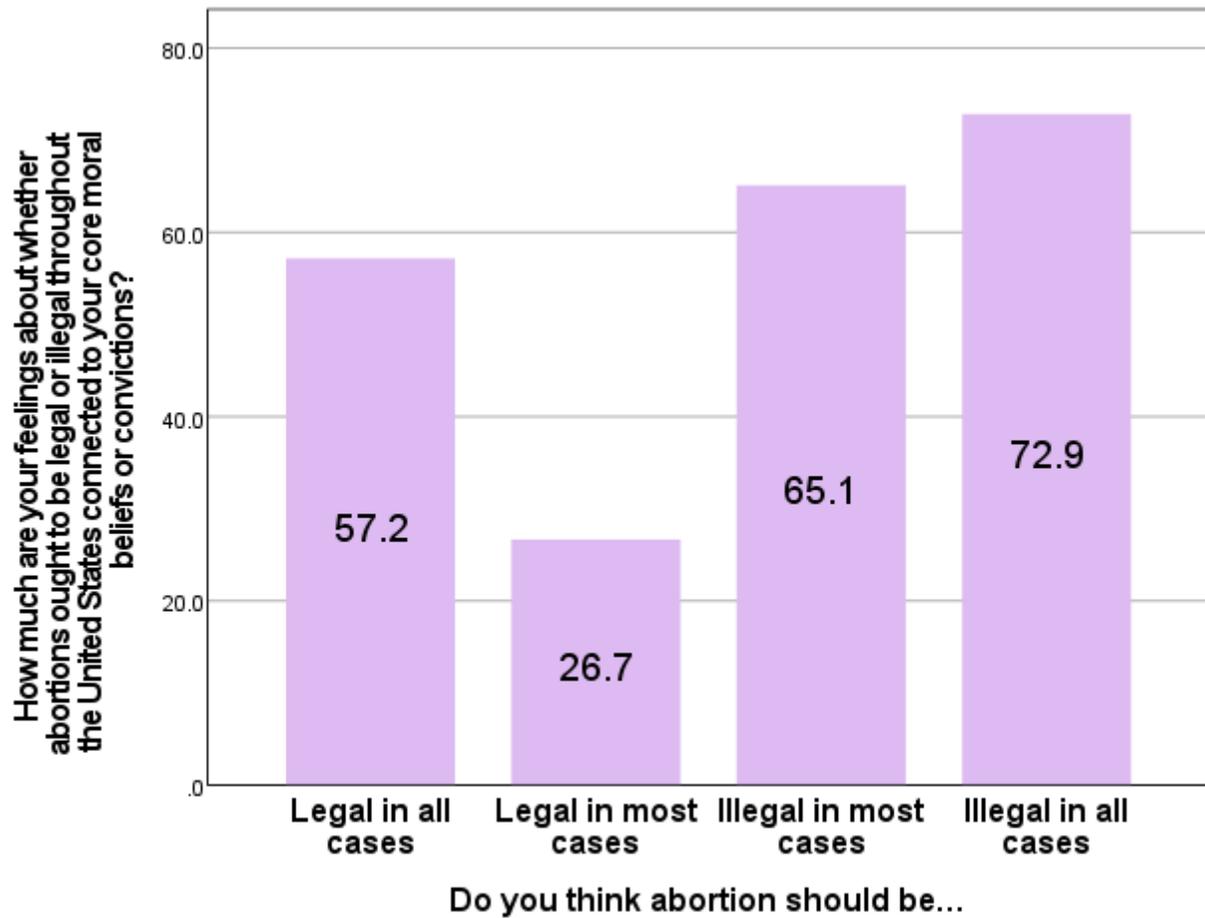
Online Appendix D: The Distributions of the Variables

Table D.1. The Distributions of the Variables Used in the Analysis (Table 2)				
Variable	Range	Mean	Std. Dev.	N
Institutional Support for the Court	0 → 1	.53	.27	1012
Approve of <i>Dobbs</i>	0 → 1	.39	.38	1012
Aware of <i>Dobbs</i>	0 → 1	.73	.31	1012
Approval/Awareness Interaction	0 → 1	.27	.33	1012
Abortion Attitude	0 → 1	.65	.31	1012
Moral Content	0 → 1	.61	.33	1012
Attitude/Moral Interaction	0 → 1	.38	.31	1012
Specific Support	0 → 1	.33	.47	1012
Ideological Distance	0 → 1	.57	.31	1012
Ideological Identification	0 → 1	.52	.28	1012
Partisan Identification	0 → 1	.47	.35	1012
Gender	0 → 1	.50	.50	1012
Age	0 → 1	.48	.30	1012
Level of Education	0 → 1	.52	.31	1012
Income	0 → 1	.59	.29	1012
Home Ownership	0 → 1	.72	.45	1012
Majority Race	0 → 1	.63	.48	1012
Marital Status	0 → 1	.48	.50	1012
Employed	0 → 1	.55	.50	1012
Metropolitan Residence	0 → 1	.84	.37	1012
Internet Access	0 → 1	.90	.30	1012

Source: The Post-*Dobbs* NORC National Survey, July 2022

Online Appendix E: Supplementary Figures

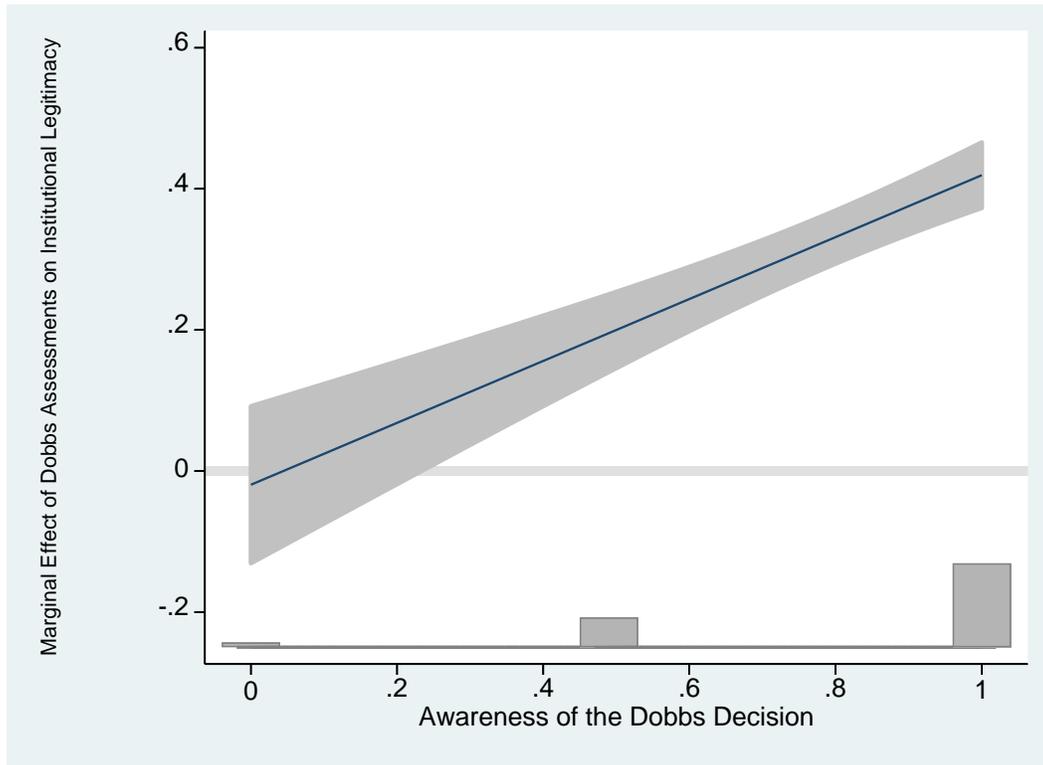
Figure E.1. Moral Content and Abortion Attitudes



Notes:

The percentages shown are the percentages of respondents who say that their views on abortion are “much” or “very much” connected to their core moral beliefs or convictions.

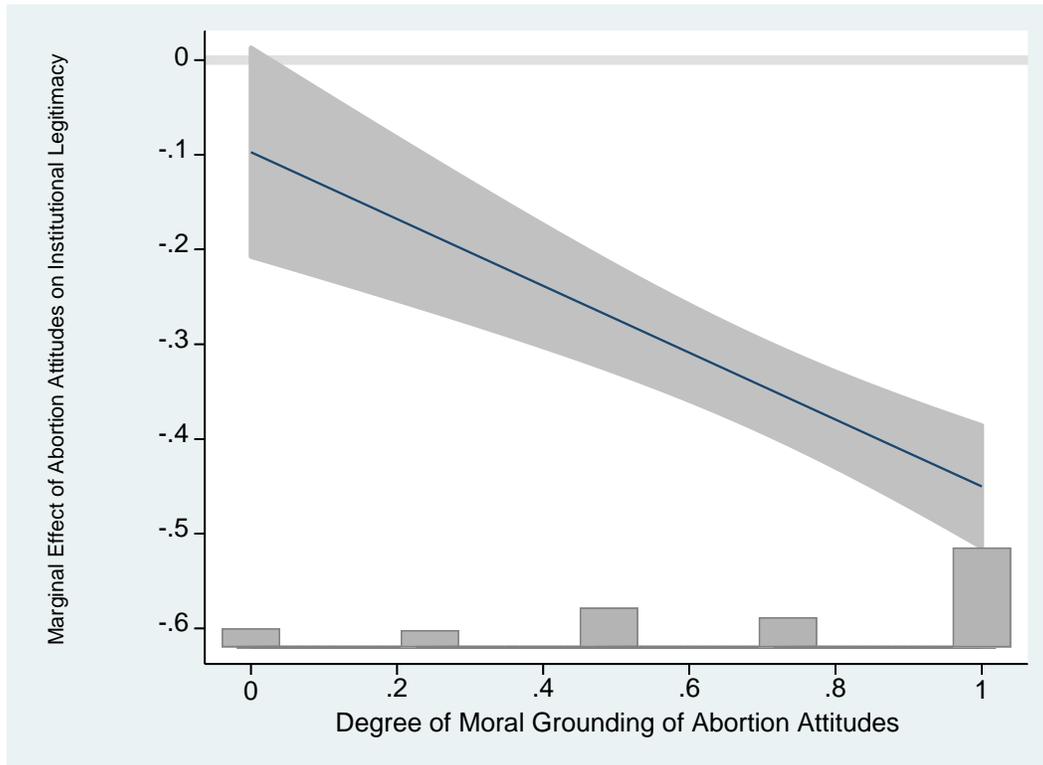
Figure E.2. The Marginal Effect of *Dobbs* Assessments on Institutional Legitimacy



Notes: This graph shows the interactive relationship between *Dobbs* awareness and assessments (as documented in Table 2, above) with institutional support. The “rug” at the bottom of the graph depicts the frequency distribution of *Dobbs* awareness and reveals a relatively small number of respondents at the low end of the awareness measure, but many respondents at the high end.

All variables are scored to range between 0 and 1.

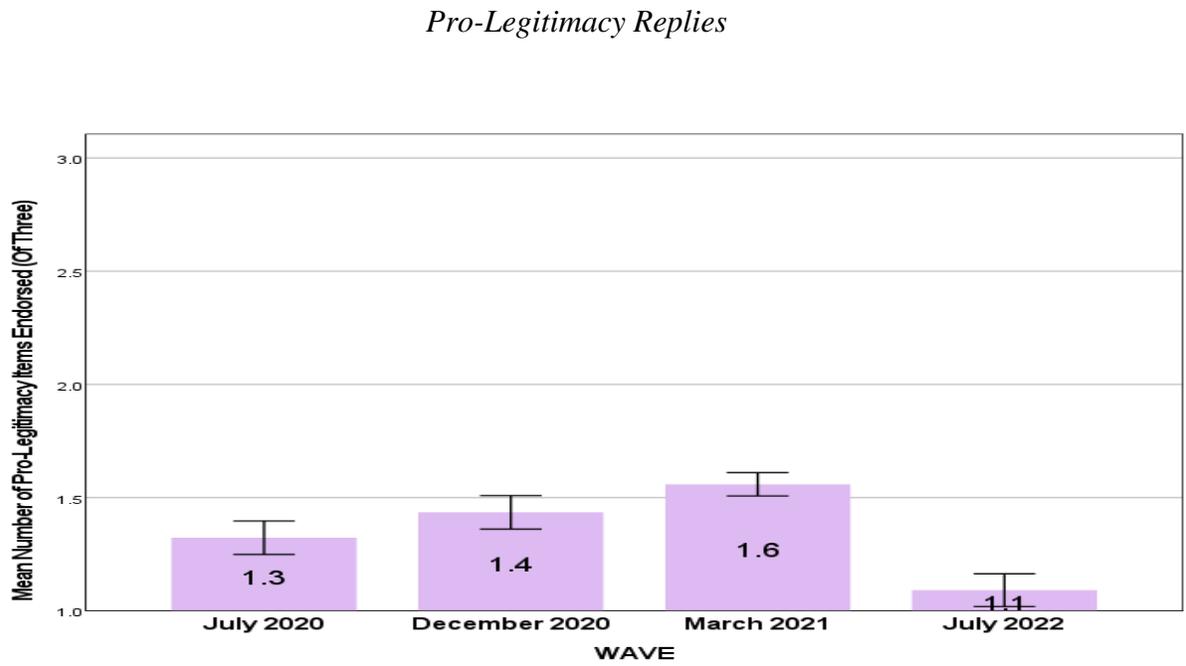
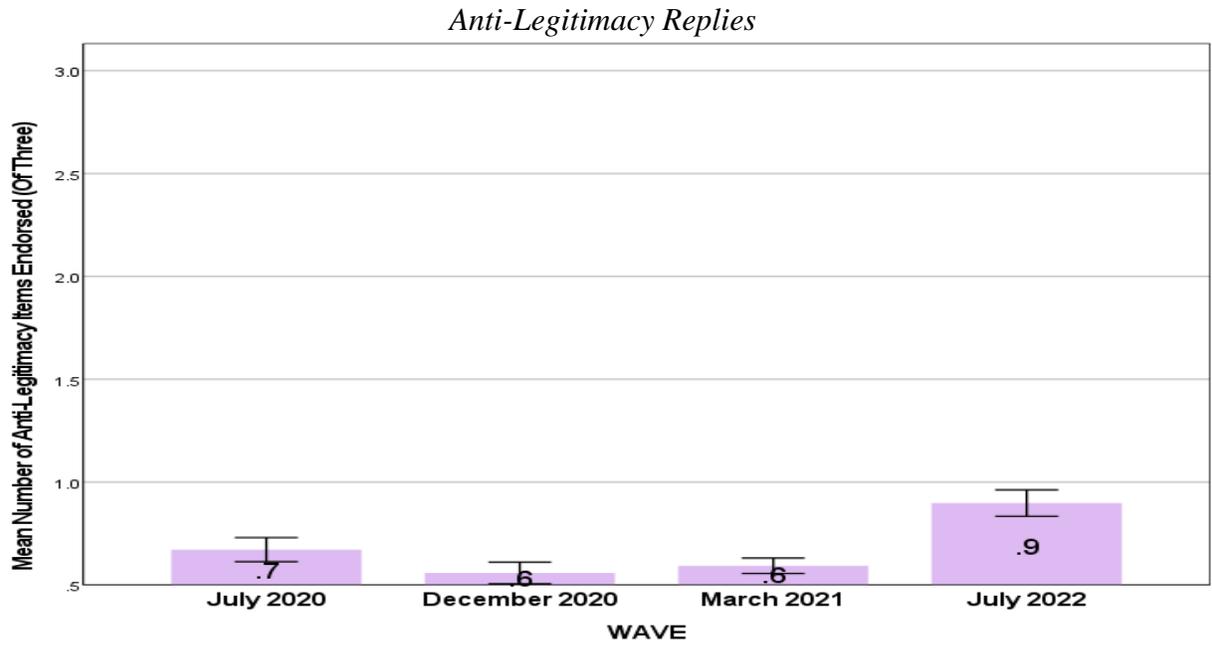
Figure E.3. The Marginal Effect of Abortion Attitudes on Institutional Legitimacy



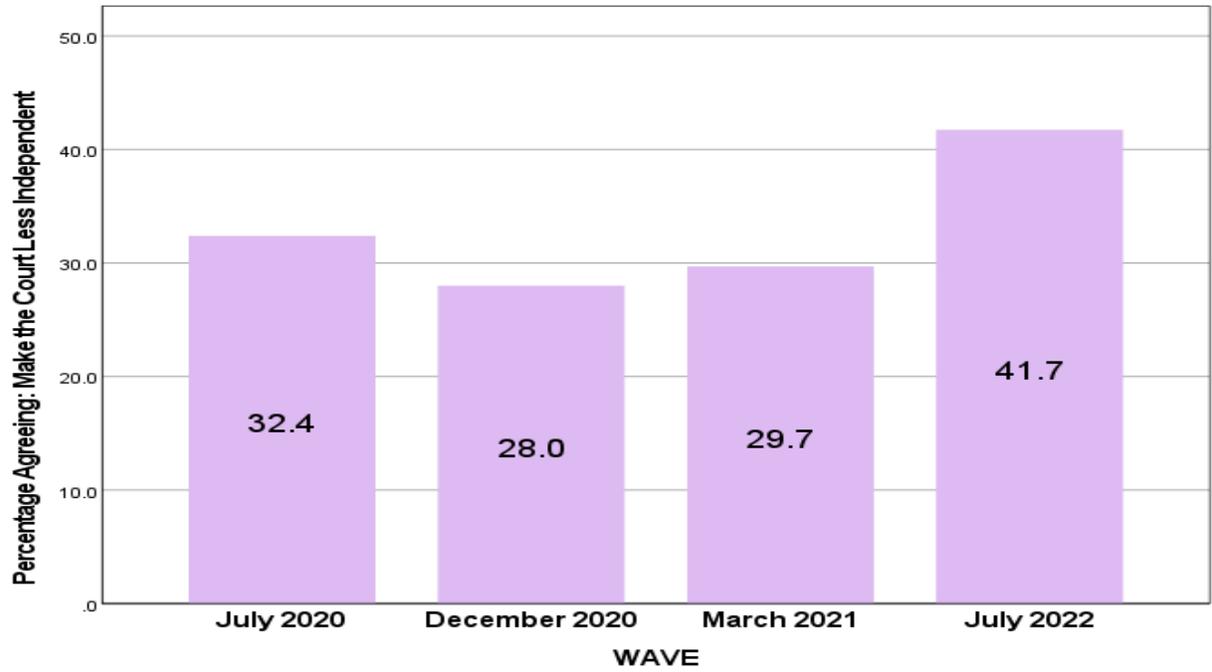
Notes: This graph shows the interactive relationship between abortion attitudes and the degree of their moral grounding (as documented in Table 2, above) with institutional support. The “rug” at the bottom of the graph depicts the frequency distribution of the moral content indicator and reveals a relatively small number of respondents at the low end of the morality measure, but many respondents at the high end.

All variables are scored to range between 0 and 1.

Figure E.4. Change in Supreme Court Attitudes, July 2020 — July 2022



Make the Court Less Independent



Online Appendix F: Analytical and Statistical Issues

Multicollinearity?

Some might wonder whether the results reported in Table 2 are excessively clouded by multicollinearity. My analyses reveal that they are not.

The Variance Inflation Factor (VIF) for a variable is a measure of the degree to which multicollinearity is worrisome, with VIFs greater than 5.0 generally considered to indicate potentially severe correlations, resulting in coefficient and p-value estimates that may not be reliable. It is conventional to understand VIFs between 1 and 5 as indicating no more than moderate intercorrelations of the independent variables, suggesting that multicollinearity is not severe enough to cause concerns.

In Table 2, the results reported in Equation V, *but excluding the two interaction terms*, appear not to be influenced by multicollinearity; the largest VIF of any of the variables is for approval of the Court's *Dobbs* decision, and the coefficient is far less than 5.0 (VIF = 1.99). For Equation V, *including the two interaction terms*, it is entirely unsurprising that the VIFs for the interaction terms exceed 5.0, as do the VIFs for the components of the interactions. At the same time, none of the other variables in Equation V is associated with a VIF greater than 2.0.

Some might also be concerned about the correlation of party and ideological identifications, but the Pearson Correlation Coefficient of these two variables is .60 (indicating only 36% shared variance) and the VIF for neither of the variables exceeds even 2.0. Similarly, as is typically observed, abortion attitudes are not strongly connected to partisanship or ideology (with correlations of -.41 and -.44, respectively).

Finally, note that the standard errors of none of the variables in any of the equations seems bloated. Furthermore, comparing the standard errors of the variables across the five equations reveals practically no increase whatsoever (note, for example, the standard errors of the coefficients for the variable "Approve of *Dobbs*" across the five equations). Indeed, a particular advantage of this hierarchical approach to investigating the relationships is that coefficients are presented with and without companion predictors (although, as I have noted, all models except Equation V are, by definition, mis-specified).

In sum, I find no evidence whatsoever that multicollinearity has unduly influenced these results and findings.

Causal Structure?

Obviously, surveys conducted prior to the *Dobbs* ruling could not assess whether opinions on a ruling that had not yet been made are connected to institutional attitudes. However, it is not clear that abortion attitudes themselves were closely connected to legitimacy prior to the decision overturning *Roe*.

In the July 2020 survey, the respondents were not asked about their views toward abortion but were asked about their feelings toward pro- and anti-abortion groups using the standard 101-point feeling thermometer. Affect toward neither those against or favoring abortion is at all connected to diffuse support for the Supreme Court ($r = -.06$ and $-.04$, respectively); nor is there any correlation with a measure of the difference in affect (relative affect) toward those

against or favoring abortion ($r = .01$). This analysis cannot be replicated with the 2022 survey data, although these 2020 findings stand in contrast to a correlation .46 in the 2022 data between abortion attitudes and diffuse support.

These findings, in conjunction with those reported in Table 2, seem to indicate that is not abortion preferences per se that are connected to court support, but that instead it is approval of the Court's *Dobbs* ruling (as moderated, of course, by the degree of awareness of the decision).

Model Specification?

Despite the arguments of Gibson and his colleagues about the importance of the connection between support for various democratic values and willingness to extend legitimacy to the U.S. Supreme Court, many analysts (including me) have failed to include in their analyses measures of democratic values. Of course, to the extent that democratic values are orthogonal to other predictors of diffuse support, failure to include values measures does not produce biased estimates.⁸ But to the extent they are not orthogonal, biased estimates may be produced.

The FATS 2020 data can also be used for another purpose. As I have noted, the *Dobbs* 2022 survey was unable to include measures of support for democratic values. Again using the equation analyzed above and the 2020 data, I can compare the regression results when the three measures of democratic values are included or excluded from the equation. Table F.1 reports these results. Model II in that table is simply the six-item index model reported above in Table C.1. Model I reports the results of that equation without the three democratic values measures. To reiterate, the purpose of this analysis is to determine whether the exclusion of the values measures in Model I produces results that differ from those of Model II, in which the values variables are included.

It should not be surprising to note that Model II accounts for a great deal more of the variance in diffuse support than Model I—extant research has repeatedly shown that democratic values are strong predictors of institutional attitudes. However, the purpose of this analysis is to compare the coefficients in Model I with those of Model II for variables that are included in both equations. This comparison shows that the coefficients differ little; with one exception, conclusions from standard tests of the null hypothesis are the same in both models. The exception is trivial. While church attendance is significant at .05 in Model II, but does not achieve statistical significance in Model I, the regression coefficients in both models are trivial. The failure to include the measures of democratic values in Model I does not seem to produce much bias in the estimates of the effects of the other predictors.

These analyses are certainly not dispositive, in part because they focus on Court attitudes prior to *Dobbs* and therefore cannot say much about Court attitudes after *Dobbs*, when Court support took a rather dramatic dip. At the same time, there is nothing in these findings that provides reasons for worrying about bias created by my failure to include measures of democratic values in the *Dobbs* survey.

⁸ For an analysis showing that neither support for the rule of law nor support for democracy is connected to “change in judicial power” see Bartels, Horowitz, and Kramon 2022, 13 (Table 2).

Table F.1. Comparing the Predictors of Diffuse Support With and Without Democratic Values

Predictor	Model I			Model II		
	r	b	s.e.	r	b	s.e.
Ideological Disagreement	-.07	-.06*	.03	-.07	-.09***	.02
Job Performance Satisfaction	.35	.23***	.03	.35	.21***	.03
Support for the Rule of Law	—	—	—	.37	.19***	.03
Political Tolerance	—	—	—	.20	.10***	.02
Support for Liberty over Order	—	—	—	.36	.18***	.03
Court Knowledge	.41	.17***	.03	.41	.10***	.02
Party Identification	.06	.02	.02	.06	.01	.02
Age	.18	.04	.03	.18	.02	.03
Hispanic	-.07	.01	.02	-.07	.01	.02
African American	-.12	.01	.02	-.12	.01	.02
Level of Education	.39	.15***	.02	.39	.13***	.02
Gender	-.08	-.02*	.01	-.08	-.02*	.01
Social Class (Home Ownership)	.16	-.01	.01	.16	-.00	.01
Church Attendance	.10	.02	.02	.10	.03*	.02
Whether Born Again	-.03	-.01	.02	-.03	-.01	.01
<i>Equation</i>						
Intercept		.22***	.03		.01	.03
Standard Deviation of Dependent Variable		.20			.20	
Standard Error of Estimate		.17			.15	
R ²		.30***			.40***	
N		870			870	

Notes:

Significance of unstandardized regression coefficients (b): *** $p < .001$ ** $p < .01$ * $p < .05$
 All variables have been scored to range from 0 to 1 (including the dependent variable). Higher scores on the dependent variable indicate greater degrees of institutional support. The coefficients reported are the bivariate correlation coefficients, the unstandardized OLS coefficients, and the standard errors of those coefficients.

Source: Freedom and Tolerance Survey, 2020.

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