Evaluating the Effects of Multiple Opinion Rationales on Supreme Court Legitimacy

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Abstract
The literature on the U.S. Supreme Court has paid substantial attention to the perceived legitimacy of the Court's decisions. However, much less attention has been paid to the perceived legitimacy of the *reasons* the Court provides for its opinions. We design two experiments to understand how the public perceives opinion content. Unlike prior studies, we take it as a given that the Court uses legal reasons in its decisions. This offers us a baseline by which to compare departures from these legal reasons. We find that extralegal reasons, when paired with legal reasons, do nothing to harm the legitimacy of the Court. Furthermore, we find that even with a lack of legal reasons, the use of extralegal reasons does not harm the legitimacy of the Court, even among those who find that these reasons are inappropriate for the Court to use.

Keywords
courts, legitimacy, United States Supreme Court

Is the perceived legitimacy of courts affected by the reasons judges give for their decisions? While scholars have spilled copious amounts of ink examining the legitimacy of judicial institutions (e.g., Baird, 2001; Bartels &

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Johnston, 2013; Gibson, 1989, 2007; Gibson & Caldeira, 2009a, 2009b; Gibson, Caldeira, & Baird, 1998; Gibson, Caldeira, & Spence, 2005; Mondak, 1992), less attention has been focused on the role of the Court itself generating (or undermining) its own legitimacy (but see Farganis, 2012; Gibson, Caldeira, & Spence, 2003; Kritzer, 2001; Mondak & Smithey, 1997). The issue is important because if the courts can bolster their legitimacy simply by basing their opinions on certain rationales, then it suggests that courts are able to control their own destiny when it comes to legitimacy; likewise, courts will be able to avoid self-inflicted wounds by avoiding reasons that lead to a decrease in legitimacy.

In the literature on judicial reasoning, commentators and scholars have long argued that there are legitimate (and illegitimate) reasons on which judges can base decisions (Bobbitt, 1982; Chemerinsky, 2002; Marmor, 2005; Wells, 2007). "Legitimate" reasons include such things as the Constitution, text of statutes, and precedent; "illegitimate" reasons include public opinion, religious texts, and personal beliefs (Baird & Gangl, 2006; Baker, 1974; Casey, 1974; Farganis, 2012).

The explanation for why these are thought to be illegitimate grounds on which to base judicial decisions is that their foundation is outside the law; that is, legitimate judicial decisions ought to be based on legal reasoning and legal reasoning alone (e.g., Gibson & Caldeira, 1996; Gibson et al., 2005).

Of course, in practice, it is not always easy to empirically disentangle whether a reason is "legal" or "extralegal." Moreover, the Court may intentionally craft an unclear opinion to hide its decisions from scrutiny by pivotal legislative actors (Owens, Wedeking, & Wohlfarth, 2013). A controlled experimental approach, such as presented in this article, is a better way to evaluate the impact of legal and extralegal opinion rationales. That is, we can use clear examples of both legal and extralegal reasons to empirically evaluate their effects on the legitimacy of the Court.

In addition, testing the claim that the reasoning of judicial decisions can affect judicial legitimacy is difficult because *all* judicial decisions are based on legal reasoning, at least in part. Judges, at least implicitly, acknowledge the importance of legal reasoning.[1] However, many judicial decisions contain more than just legal reasoning, and it is possible that the inclusion of certain extralegal factors can serve to undermine the perceived legitimacy of the decision. This might particularly be the case for individuals who expect that the Court should decide cases solely (or primarily) based on legal factors. If the Court's decisions fail to live up to the expectations of citizens, then the Court could very well suffer a loss of legitimacy.

In this article, we design two experiments to determine whether the inclusion of extralegal factors can undermine the legitimacy of Court decisions.

Across both experiments, we find that the inclusion of extralegal reasons does not harm the legitimacy of the Court, and find some evidence that, when individuals disagree with the outcome of the case, even legalistic reasoning may harm the Court's legitimacy.

Reasons and Judicial Decision Making

Although studies of aggregate levels of public support for the Supreme Court (e.g., Caldeira & Gibson, 1992) have consistently shown that support for the Court is not affected by case outcomes, individual level studies (e.g., Grosskopf & Mondak, 1998; Hoekstra, 2000, 2003; Kritzer, 2001; Mondak, 1991, 1992) have documented that case outcomes, especially of widely published and controversial cases, have the power to influence evaluations of the Court, the justices, and the issues under review, especially in the communities affected by the decision. Indeed, Zink, Spriggs, and Scott (2009) find that individuals are more likely to agree with and accept a decision, even if they are ideologically predisposed to disagree, if the Court is unanimous and follows a precedent.

Of course, for the substantive details of the opinions to affect evaluations, the media must make them available to the public and the public must become aware of them. We are unaware of any systematic empirical research on how often extralegal reasons are discussed in media coverage of Supreme Court decisions. However, there are reasons to believe that the rationale behind a decision is likely to appear. First, the media are more likely to cover civil liberties and rights cases than business and economic cases (Slotnick & Segal, 1998), which are often more controversial and may be more likely to involve extralegal reasoning. Second, the media tend to emphasize more conflictual aspects of stories to grab the readers' interest. Utilizing extralegal reasons in support of an opinion is more controversial than simply relying on the Constitution or precedent, as extralegal reasons are not widely perceived as acceptable. Finally, individual level research on public knowledge of the Court has found that the media do a good job of covering the decisions of the Court, at least in the communities affected by the decision. For instance, Hoekstra (2003) finds that reporting of Supreme Court decisions of local interest was both extensive and correct, providing information on the background of the dispute, as well as on the reasoning of the majority opinion, and sometimes even covering the separate opinions as well.

Public opinion research has generally shown that the public knows little about the Supreme Court (but see Gibson & Caldeira, 2009c). It therefore seems unlikely that the average member of the public becomes aware of the reasons given in most Supreme Court opinions, except in controversial and

widely publicized cases. However, citizens who are most affected by the decision have surprisingly high levels of awareness of the Court's decisions (Franklin & Kosaki, 1989; Hoekstra, 2000, 2003). These findings are in line with public opinion research, which has found that citizens who are part of a particular issue public tend to seek more information and pay more attention to news about the issue.

Thus, we suggest that the public, particularly the community affected by the Supreme Court decision, is likely to become aware of any extralegal reasons offered by the justices, if present, and that these reasons are likely to affect citizens' evaluation of the Court, even if the citizens agree with the decision.

Therefore, we expect that when the Court bases its decisions on legal factors alone, it will have more legitimacy than when the Court bases its decisions on a combination of legal and extralegal factors. Importantly, judges themselves recognize the importance of principled decision making when writing opinions. Farganis (2012) points out that Justice Byron White "cautioned that the Court 'comes nearest to illegitimacy' when the justices base their rulings on factors other than constitutional text" (p. 207). Indeed, Baird and Gangl (2006) find that perceptions of fairness in Supreme Court decisions are dependent on the presence of legal guidelines.

In sum, we theorize that legalistic reasons given in Supreme Court opinions are more neutral (and consequently, more legitimate) than reasons outside of a legalistic framework (i.e., public opinion and beliefs about morality). Despite the evidence that judges are influenced by public opinion (Casillas, Enns, & Wohlfarth, 2011; McGuire & Stimson, 2004; Mishler & Sheehan, 1993), there is still a widespread perception that judges should rely on legal rationales when deciding cases (Baird & Gangl, 2006). Similarly, they are not expected to inject their own moral beliefs or public perceptions into opinions.[2]

Farganis (2012) designs an experiment to examine the effects of opinion rationales on Court evaluations and finds that "the Court's perceived legitimacy is highest when the justices used legalistic arguments and lowest when they rely on extraconstitutional justifications" (p. 213). He cautions, though, that the effects are not as pronounced as many have thought. Even in the condition that yielded the lowest levels of legitimacy, a majority of the subjects still were loyal toward the Court.

This is not altogether surprising as legitimacy is best conceptualized as long-standing, enduring loyalty toward an institution (e.g., Easton, 1965). Thus, we should not expect one decision to erode much support for the institution. This is further magnified by the setup of Farganis's (2012) experiment. To justify using "pure" treatments, the author points out that

the goal is to isolate the effects of specific types of reasons. Consequently, subjects are presented with one of three types of reasons: legalistic, poll results, and religion. However, no judicial decisions are justified purely on the basis of poll results or religion. Rather, these factors may be added to an opinion *as a supplement to* the legalistic reasoning. Using an experiment that contains judicial opinions with no legal reasoning in them makes it more likely that differences in legitimacy will be found. A real-world example will make this clear.

In *Lawrence v. Texas* (2003), the Supreme Court overruled *Bowers v. Hardwick* (1986) and held that consenting adults were free to engage in acts of sodomy. In his majority opinion, Justice Kennedy wrote,

> We conclude the case should be resolved by determining whether the petitioners were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution.

To do that, he engaged in a long discussion of past Court decisions as well as the text of the Constitution itself.

Clearly, these are the legal reasons for the decision. But Kennedy did not stop there: "The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries." Thus, the fact that other countries protect the right of homosexuals to engage in consensual sex is another reason offered by the Court to overrule *Bowers*. Justice Kennedy supplemented his legal analysis with extralegal factors. Media coverage of *Lawrence* included discussion of the non-legal reasons offered up by the majority opinion (e.g., Greenhouse, 2003), and critiques of this decision (e.g., Scalia's dissent in the case; Rosen, 2015) highlighted that element. Is a decision like this regarded as less legitimate in the eyes of the public because Justice Kennedy did not stick exclusively to legal reasoning?

To properly test whether the reasons given by the Court can undermine its legitimacy, it is important to couple legalistic arguments with extralegal arguments and then compare the support for those who are exposed only to the legal arguments with those who are exposed to the legal arguments plus extralegal factors. The "legal arguments only" treatment serves as an important control group, from which we can determine any effects on legitimacy (if any). This leads to our first hypothesis:

Hypothesis 1 (H1): Subjects exposed only to the legalistic reasoning should have higher levels of legitimacy toward the Court than those exposed to the legalistic reasoning coupled with extralegal factors.

Expectancy Theory, Ideological Agreement, and Decision Rationales

Hypothesis 1 is based on the assumption that a majority of the public holds the view that judges should strictly follow the rule of law when making decisions. While this view fits with many normative values related to judicial decision making, it is possible that some individuals expect judges to behave differently than this ideal. If it turns out that a significant number of people feel that judges ought to consider extralegal factors when deciding a case, then we should expect that the legitimacy attributed to the institution due to legalistic reasoning might not be damaged when extralegal factors are also presented in court opinions.[3] In other words, we should not see deleterious effects on court legitimacy due to extralegal factors if the public believes that judges should base their decisions on a variety of sources. Gibson (2012, p. 12; Gibson & Caldeira, 2009a) refers to this as expectancy theory: "Expectations matter, and citizens differ in their expectations."

What are some of the expectations people have of courts and judges? In Gibson's (2012) analysis of how the politicization of the judicial selection process affects judicial legitimacy, he examines the expectations that residents have of Kentucky Supreme Court judges. Unsurprisingly, he finds that a large majority of respondents believe that the judges should strictly follow the rule of law.

Consequently, it appears that legitimacy is highly linked with the public believing that the Court uses legalistic reasoning for its decisions. However, Gibson (2012) also finds that almost two thirds of people (64.2%) believe that judges should "state policy positions during campaigns" and 46.5% of people believe judges should "represent the majority" (p. 94). In a 2001 Justice at Stake Survey measuring opinions on the responsibilities of courts and judges, on a 10-point scale, "making impartial decisions" scored 7.58, behind "defending constitutional rights and freedoms," and "ensuring fairness under law," among others (Gibson, 2012, p. 92). This suggests that a substantial portion of people believe that the Court should do more than just strictly apply the law to a given case. If these individuals read about an opinion in which a judge does more than strictly applies the rule of law to make a decision, legitimacy is not likely affected as expectations are not violated. Consequently, we expect,

> **Hypothesis 2 (H2):** Extralegal reasons will only harm the Court's legitimacy for those individuals for whom this defies their expectations of decision making.

In addition to expectations directly related to the rationales provided in the decision, ideological agreement or disagreement with the decision may also affect feelings of legitimacy toward courts (Bartels & Johnston, 2013). Swanson (2007) finds that people who have ideological disagreement with a court decision are more likely to show a decline in diffuse support for the Supreme Court. This leads us to our third hypothesis:

Hypothesis 3 (H3): Individuals who agree with the Court's decision will give the Court higher levels of legitimacy regardless of the reasons given by the Court.

Experiment 1

Method

One hundred ninety-two undergraduate students at a large Mid-Atlantic university were recruited to take part in the study. The sample consisted of 49% women, with a mean age of 19.35, and predominantly Caucasian (83% White, 6.3% Asian American, 3.7% Latino American, 3.1% African American, and 3.7% other ethnicities). The sample leaned Democratic, with 64% identifying as Democrats, 32% as Republicans, and 4% as Independents.[4]

Participants were asked to complete a brief (approximately 10 min) survey on attitudes toward the Supreme Court. The survey was completed at the beginning of their scheduled introductory political science courses (either American Government or Research Methods in Political Science). Following completion of the survey, participants were thanked for their participation and later received debriefing information via email after students in all classes had completed the survey, to prevent contamination.

Experimental Design

Participants first completed three items measuring their confidence in the Court, their ideological perceptions of the Court, and the degree to which they believe the Court makes decisions based on the law. Then, embedded within the survey was a 2 (legal argument: precedent/constitutional) × 2 (moral reason: provided/not provided) × 2 (public opinion reason: provided/not provided) between-subjects factorial experiment. Summarily, participants read about a case, described in further detail below, and were randomly assigned to receive one of two types of legal arguments on which the case was decided: precedent or constitutional.[5] They were also randomly assigned two possible extralegal arguments: moral and public opinion. This results in

Table I. Experimental Conditions.

	Legal argument	Legal + moral	Legal + public opinion	Legal + moral + public opinion
Precedent	1a	1b	1c	1d
Constitution	2a	2b	2c	2d

eight possible conditions: two control/baseline conditions wherein participants received no extralegal reasons, four conditions in which they additionally received one type of extralegal reason, and two conditions in which they additionally received both types of extralegal reasons. This is an important departure from previous work, as we want our treatments to be as realistic as possible, and thus include a legalistic reason in each treatment condition. Table 1 summarizes the experimental conditions, and the full stimuli are provided in Appendix A.

Our experimental treatment consists of a fictitious newspaper article describing the recent U.S. Supreme Court decision in *Clapper v. Amnesty International USA* (2013). In *Clapper*, the Court held that Amnesty International and other plaintiffs lacked standing to challenge a 2008 amendment to 50 U.S.C. § 1881a (also known as Section 702[1]) of the Foreign Intelligence Surveillance Act (FISA). The Amendment substantially expanded the National Security Agency's ability to conduct surveillance without a warrant; the government only had to demonstrate that the surveillance would seek "foreign intelligence information" and target "persons reasonably believed to be located outside the United States." The plaintiffs argued that it was likely that the U.S. government had targeted them for surveillance, and that because of their need to conduct sensitive communications with overseas parties, they would sustain greater inconvenience and higher costs in trying to secure these communications. The Court dismissed the case, finding the plaintiffs' allegations of harm speculative and based on a hypothetical situation (instead of an actual, concrete case). In its decision, the Court cited *Monsanto Co. v. Geertson Seed Farms* (2010, p. 17), where the Court decided that to have standing before the Court, a plaintiff must show that injury is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling."

The *Clapper* case was chosen as the treatment for several reasons. First, to preserve ecological validity, we wanted to present a ruling where it was possible to insert the experimental manipulations without significantly diminishing the realism of the case. That is, in the case we selected, the reasons that we attributed to the Supreme Court decision in the fictional newspaper

article, while not factually correct, sound plausible to the respondents. Second, we wanted to present a case where there would be enough disagreement on the policy issue among the respondents to generate variation in the data. Third, we wanted to avoid obviously partisan or "hot button" issues so that differences in party affiliation and ideology do not drive any observed effects. A recent Gallup Poll supports this assumption, and finds that public support is relatively split on the issue of wiretapping.[6] A slim majority disapproves (53%), and although there are some differences in approval by party (49% of Democrats approve vs. 32% of Republicans), the difference is not nearly as large as for other issues. In fact, support by party was reversed during Bush's term in 2006 when the issue was framed as "Bush Administration Wiretapping."[7] Indeed, support for wiretapping did not differ across levels of party identification in our sample, $F(6, 181) = 1.37$, $p = 0.23$, so we can be confident that ideological agreement or disagreement with the issue is not driving the results.

Following the experimental manipulations, participants responded to nine items measuring institutional legitimacy toward the Court, based largely on the traditional approach developed by Caldeira and Gibson (1992) and Gibson et al. (2003), as well as on the measures used by Farganis (2012). All measures utilized a 1 (*strongly disagree*) to 7 (*strongly agree*) Likert-type scale and were recoded so that higher values indicated more support for the Court. Also included were measures of confidence and perceived ideology of the Court, to examine any changes following the experimental treatment, as well as items measuring their agreement or disagreement with the outcome. Participants also completed a four-item child-rearing scale that strongly predicts authoritarian values (Feldman & Stenner, 1997; Hetherington & Weiler, 2009), which should be closely related to attitudes toward wiretapping/surveillance. Finally, participants completed several demographic items and two manipulation checks (one item asking the direction in which the case was decided and one open-ended item asking for the reasons provided). Three individuals were removed from the data set for failing to pass the manipulation checks.

Results

Extralegal reasons. The primary dependent variable consists of institutional support for the Court, which is computed by averaging the institutional support measures described above and listed in Table 2.

Based on principal components analysis, two items were eliminated (Numbers 7 and 9 in Table 2), and the resulting scale loads onto a single factor and exhibits a high degree of reliability ($\alpha = 0.82$).[8] The independent

Table 2. Measures of Institutional Legitimacy.

1. If the U.S. Supreme Court started making a lot of decisions like the one you just read, it might be better to do away with the Supreme Court altogether (*reverse-scored*)
2. If judges on the Supreme Court were to make more decisions like the one you just read, they should be removed from their position (*reverse-scored*)
3. Based on the decision you just read, you believe the right of the Supreme Court to decide certain types of cases should be reduced (*reverse-scored*)
4. If the U.S. Supreme Court is to continue making decisions like the one you just read, we ought to have a stronger means of controlling the actions of the U.S. Supreme Court (*reverse-scored*)
5. Based on the decision you just read, you believe the U.S. Supreme Court gets too mixed up in politics (*reverse-scored*)
6. If the Supreme Court were to make a series of decisions like the one you just read, you believe it would be best if the U.S. Supreme Court were made less independent so that it listens more to what the people want (*reverse-scored*)
7. If elected officials feel that the decision you just read would be bad for the country, they should come up with their own policies instead (*reverse-scored*)
8. If the Supreme Court were to make a series of decisions like the one you just read, people should still be willing to defend the Court's power
9. If a majority of Americans oppose the decision you just read, it should be ignored by the other branches of government (*reverse-scored*)

variables of interest are simply a series of three dummy variables that correspond to the legal argument provided as well as the extralegal reasons provided. The first, *Legal Argument*, takes a value of 0 if provided with a basis for the decision that is grounded in the Constitution and 1 if provided with a basis grounded in precedent. The second, *Moral*, takes on a value of 1 if provided with a moral reason in addition to the legal argument, and 0 if not provided. Finally, the third, *Public Opinion*, takes on a value of 1 if provided with a public opinion reason in addition to the legal argument, and 0 if not provided.

Results are first analyzed in a 2 (legal argument) × 2 (moral reason) × 2 (public opinion reason) ANOVA with institutional support as the dependent variable. The ANOVA reveals no significant variation among groups. In fact, only a main effect for moral reasons approaches statistical significance, and it is in a positive direction $F(1, 181) = 2.63$, $p = 0.11$. In other words, including a moral reason appears to increase institutional support, though does not quite reach statistical significance.

The mean institutional support for each cell is displayed in Figure 1, with contrasts between each treatment condition and the relevant baseline/control
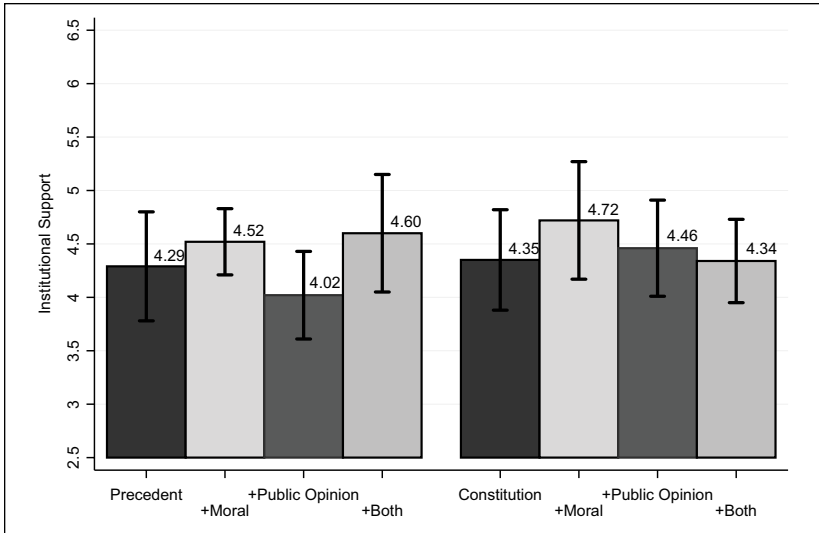
Figure 1. Mean institutional support by reasons provided for decision.
Note. Bars represent 95% confidence intervals.
*p < 0.05. **p < 0.01.

condition (i.e., legal argument only, either precedent or constitutional) using a post hoc Tukey test. No significant differences between conditions emerge. That is, moral and public opinion reasons did not result in lower institutional support compared with the control condition. Furthermore, it appears that the largest effect is actually in the opposite direction, with an increase in support in the moral conditions, compared with each baseline, though these are nowhere near statistically significant ($p = 0.94$ and $p = 0.99$ for the precedent and constitutional conditions, respectively).

While there are no differences between groups in terms of institutional support, might participants exposed to these treatments differentially show subtler changes in perceptions of the Court, in terms of either confidence in the Court and/or perceived ideology of the Court? To account for this, we measured confidence in the Court as well as the perceived ideology of the Court before and after participants received the relevant experimental treatment. Both measures utilized a 7-point Likert-type scale, and changes were computed simply by taking the difference between the pre- and post-treatment items. A 2 (legal argument) × 2 (moral reason) × 2 (public opinion reason) ANOVA is again used to observe any differences arising from these factors, using both changes in confidence and perceived ideology as the

Table 3. Mean Support, Confidence, and Perceived Ideology Across Conditions.

	n	M confidence change pre/post	M ideology change pre/post
Constitution only	25	−0.36 (0.18)	−0.68 (0.23)
Constitution + moral	22	0.00 (0.22)	−0.41 (0.35)
Constitution + public opinion	21	−0.39 (0.20)	−0.10 (0.23)
Constitution + moral + public opinion	28	−0.75 (0.19)	−0.25 (0.18)
Precedent only	23	−0.57 (0.26)	−0.22 (0.20)
Precedent + moral	29	−0.31 (0.19)	−0.62 (0.19)
Precedent + public opinion	19	−0.37 (0.24)	0.16 (0.32)
Precedent + moral + public opinion	20	−0.18 (0.24)	−0.32 (0.34)

Note. All statistical comparisons are to the baseline "Constitution" or "Precedent" categories. Standard errors are in parentheses.
*$p < 0.05$. **$p < 0.01$.

dependent variables. In regard to changes in confidence in the Court, no significant main effects or interactions emerge. In terms of changes in perceived ideology, a main effect of public opinion does emerge, $F(1, 187) = 3.72$, $p = 0.06$, though it is not quite significant at the 0.05 alpha level (two-tailed). This indicates that public opinion does marginally affect differences in perceived ideology overall, and appears to move perceived ideology in a more liberal direction, at least compared with the other treatments. However, because none of the interaction terms are significant, there are unlikely to be any significant differences between cells, as noted in Table 3, which contrasts between the baseline conditions and the extralegal conditions.

In both analyses we observe no significant differences between conditions. Consistent with the results from the ANOVA using perceived ideology as the dependent variable, the largest effect appears among those receiving public opinion reasons, and perceived ideology shows a slight increase in the liberal direction, though these contrasts are not statistically significant at conventional levels.

Outcome disagreement. While we find that the Court's legitimacy does not appear to decrease among individuals overall, regardless of the reasons offered to justify the decision (H1), we may expect reasons to matter more among individuals who disagree with the outcome of the case (H3). Simply put, one is more likely to find fault in an argument with which one disagrees, than one with which one agrees. To account for this, we included a measure

Table 4. Mean Institutional Support by Agreement With Outcome and Reasons.

	n	Disagree with outcome	n	Agree with outcome
Legalistic only	19	3.85 (0.28)	24	4.94 (0.19)
Moral	20	4.48 (0.25)	25	4.84 (0.21)
Public opinion	16	3.75 (0.18)	22	5.01 (0.20)
Moral and public opinion	22	4.02 (0.22)	22	4.96 (0.23)

Note. All statistical comparisons are to the baseline "Legalistic Only" category. Standard errors are in parentheses.
*$p < 0.05$. **$p < 0.01$.

of support for the outcome of the decision on a 7-point Likert-type scale in the survey.[9] We dichotomize this variable, with those answering below the midpoint classified as disagreeing with the decision, and those answering above the midpoint classified as agreeing with the decision.[10] We include this variable in a 2 (decision support) × 2 (moral) × 2 (public opinion) between-subjects ANOVA. We omit the Legal Argument variable, as the results reported previously show no significant differences between those in the constitution and precedent conditions. While none of the critical interaction terms are significant, a significant main effect of decision support does emerge, $F(1, 171) = 31.17$, $p < 0.001$. This is rather unsurprising, as individuals are more likely to view an institution as legitimate if that institution is making decisions with which they agree (Bartels & Johnston, 2013). The means for each condition are provided in Table 4.

As can be seen, institutional support does not change when extralegal reasons are provided, even among those who disagree with the decision. Figure 2 shows that while those who disagree with the decision report significantly less institutional support than those who agree with the decision, this is entirely unrelated to the reasons provided for the decision.

The results are similar when treating agreement with the outcome as a continuous measure ranging from 1 (*strongly disagree*) to 7 (*strongly agree*). Table 5 displays the results of an ordinary least squares (OLS) regression model predicting institutional support by interacting outcome agreement with the reasons provided, using the legal only condition as the baseline category. As shown, none of the extralegal reason coefficients reach significance, nor are any of the interaction terms significant.

However, outcome agreement is strongly significant, showing a large and positive effect. Participants who most agree with the decision express the strongest institutional support, viewing the Supreme Court as a more legitimate institution than those who disagree with the decision. The
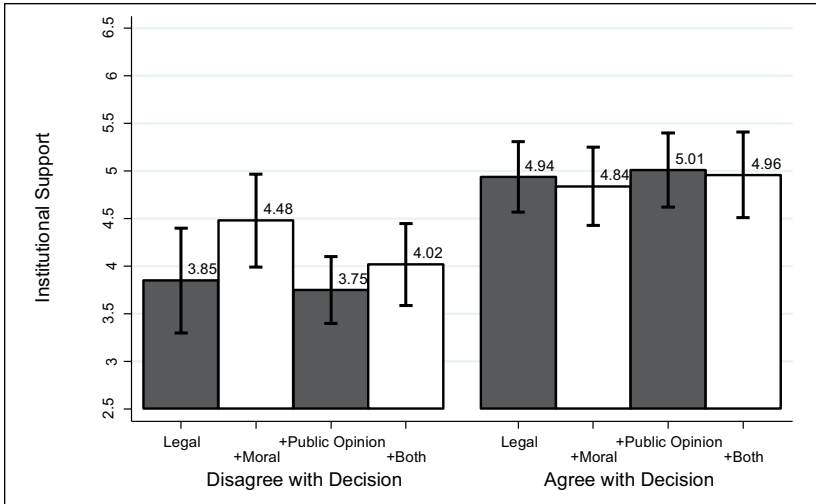
Figure 2. Mean institutional support by agreement with decision and reasons provided.
Note. Bars represent 95% confidence intervals.
$†p < 0.10$. $*p < 0.05$. $**p < 0.01$.

Table 5. Predicting Institutional Support by Agreement With Outcome and Reasons.

	Institutional support
Moral	−0.405 (0.451)
Public opinion	0.670 (0.438)
Moral and public opinion	0.055 (0.446)
Outcome agreement (higher = more support)	0.280 (0.076)**
Moral × Outcome Agreement	0.075 (0.114)
Public Opinion × Outcome Agreement	−0.128 (0.111)
Moral and Public Opinion × Outcome Agreement	−0.014 (0.110)
Constant	3.384 (0.295)**
R^2	0.21
N	189

Note. Standard errors are in parentheses.
$*p < 0.05$. $**p < 0.01$.

marginal effects of outcome agreement, separated by reason, are plotted in Figure 3. Clearly, the extralegal reasons do not affect institutional support.
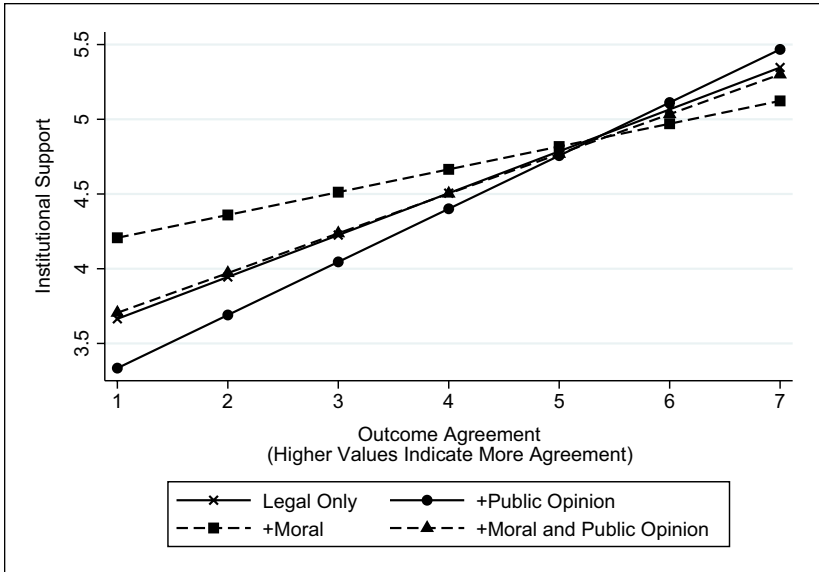
Figure 3. Institutional support and outcome agreement by reason provided.

Instead, agreement with the outcome of the case exerts a large effect, independently of the reason(s) justifying the decision. Participants who most strongly disagree with the decision perceive the Court as much less legitimate than those who most strongly agree with the decision by nearly two points on a 7-point scale. This is an important result, as it suggests that the Court need not worry too much about their justification for the decision, whether legal or extralegal, but instead should be more concerned about public agreement with the outcome. Legitimacy is clearly affected by this agreement, with those in strong disagreement conferring little legitimacy upon the Court.

Discussion

As a whole, these results provide consistent empirical evidence that extralegal reasons do nothing to harm the legitimacy of the Court, contrary to H1. Institutional support, confidence, and perceived ideology of the Court remain unaffected when moral and public opinion reasons are provided in addition to standard legal arguments. This is true even among those who disagree with the decision. In fact, it appears that moral arguments could possibly even

increase the legitimacy of the Court. This stands in clear contrast to previous work that finds extralegal reasons decrease the legitimacy of the Court (e.g., Farganis, 2012). We find that when these reasons are provided in addition to more commonplace legal arguments, there are no observable effects.

However, we do show that agreement with the outcome of the case is a consequential predictor of legitimacy, consistent with H3. When individuals disagree with the outcome, regardless of the reason justifying the decision, they perceive the Court as less legitimate. When they agree with the outcome, however, they view the Court a highly legitimate institution. While we cannot speculate with these data as to how long-lasting this effect is, it does suggest that the Court may lose legitimacy if it makes a highly unpopular decision (or, more plausibly, a series of unpopular decisions).

Experiment 2

To further support the claim that extralegal reasons do not affect the legitimacy of the Court, we conduct a second experiment that supports and extends our findings. This second experiment uses a much larger sample to alleviate concerns about statistical power in the first experiment. In addition, the results from the first experiment omit one crucial factor: individuals' expectations about how judges should behave. As mentioned earlier, scholars simply cannot assume individuals expect the same behavior of judges and courts. In addition, the case in our vignette in Experiment 1 consisted of a procedural issue, and not a substantive one. Thus, it is possible that our results were driven by the nature of the vignette. Furthermore, we used undergraduate students in Experiment 1, and this choice of subjects could possibly affect the conclusions. In sum, we designed this second experiment to be a much more stringent test of our hypothesis: If there are no effects on the legitimacy of the Court even when expectations are violated, then we can more credibly conclude that the reasons justices offer in their opinions do not adversely affect the Court's legitimacy.

Method

The second experiment occurred in two stages: a short (3-5 min) pre-survey and a slightly longer survey experiment (8-10 min), both conducted using Amazon's Mechanical Turk (MTurk). Participants received US$0.10 for completing the pre-survey, and were told that they would receive an additional US$0.40 for completing a second survey.

The pre-survey contained measures asking participants to what degree three reasons (precedent, moral arguments, and public opinion polls) are

appropriate for the Court to use in its opinions. For each reason, we use a 1 (*very inappropriate*) to 7 (*very appropriate*) scale. The pre-survey also asked individuals to report their confidence in the Court, using a 1 (*not confident at all*) to 7 (*very confident*) scale, and also included standard demographic measures. Participants completed the pre-survey at least one week in advance of the survey experiment, because if participants were asked to report the reasons they expect the Court to use, and then their expectations were immediately violated, they could guess the nature of the experiment quite easily. Participants were invited to complete the survey experiment exactly one week after they completed the pre-survey, and were given 2 weeks to complete the experiment.

A total of 1,193 individuals completed the pre-survey (median age 31; 51% female; 76% Caucasian; 19% Republican, 43% Democratic, 38% Independent). Of these 1,193 individuals, 564 individuals (median age 36; 57% female; 78% Caucasian; 20% Republican, 47% Democratic, 33% Independent) completed the follow-up survey experiment for a response rate of 47%.[11]

Experimental Design

The survey experiment utilizes a 2 (legalistic reason: present/absent) × 3 (extralegal reason: none/moral/public opinion) between-subjects design.

Summarily, participants were assigned to read a case regarding campaign finance in which the Court favors fewer campaign finance restrictions (full stimuli are provided in Appendix B). We vary the reasons used to justify the decision. Half of the participants are randomly assigned to receive a legalistic reason (precedent) while the other half do not receive such a reason. Participants are also randomly assigned to receive either no additional reasons, a moral reason, or a public opinion reason. The reasons provided in each of the treatment cells are shown in Table 6.

Following the manipulation, participants responded to the same nine items measuring institutional legitimacy used in Experiment 1. Again, all items utilized a 1 (*strongly disagree*) to 7 (*strongly agree*) Likert-type scale, recoded such that higher values indicate more institutional legitimacy. Participants also responded to the same item used in the pre-survey measuring confidence in the Court on a 7-point scale (higher values indicate more confidence), and participants also indicated their agreement with the outcome of the case on a 1 (*strongly disagree*) to 7 (*strongly agree*) Likert-type scale. Finally, we included a manipulation check that asked participants about the outcome of the case (i.e., if the Court favored fewer or more restrictions on campaign finance). Participants who did not indicate that the Court favored fewer restrictions were excluded from the analysis (63 participants).[12]

Table 6. Reasons Provided in Experiment 2 by Cell.

	A: Baseline	B: Moral	C: Public opinion
1: Legalistic + extralegal	1A: Precedent	1B: Precedent + moral	1C: Precedent + public opinion
2: Extralegal only	2A: No reason	2B: Moral	2C: Public opinion

Results

First, it is important to note that the results of Experiment 2 replicate the results of Experiment 1. (The replication results may be found in the online appendix.) The more important aim of Experiment 2, however, is to examine how legitimacy is affected when individuals' expectations are violated (H2). That is, if legitimacy is not harmed even when the Court violates individuals' expectations of what reasons are appropriate for the Court to use, we can be quite confident that the use of extralegal reasons does not undermine the Court's legitimacy.

We begin, however, by examining the expectations individuals have about the use of precedent, the legalistic reason we utilize in the experiment. Overall, individuals find that precedent is an appropriate reason for the Court to use in an opinion. Using the 7-point expectations measure from the pre-survey, reverse-scored such that higher values indicate higher expectations violation (i.e., less appropriate), the mean value is 2.68 (SD = 1.41). But does the degree to which individuals' expectations of appropriateness are violated affect institutional legitimacy when they read an opinion containing that reason? We use OLS regression to predict institutional legitimacy based on the degree to which individuals' expectations are violated. Table 7 displays these results.

First, restricting the analysis to the precedent only condition (Cell 1A), there is a negative and significant effect, $t(1, 83) = -3.35$, $p < 0.01$, of expectations. This is not surprising, as the more inappropriate individuals find the use of precedent in justifying a decision made by the Court, the less legitimacy they confer upon the Court when it uses that reason.[13] This result holds when also including participants in all three precedent conditions (Cells 1A, 1B, and 1C), two of which also include an extralegal reason, $t(1, 222) = -4.42$, $p < 0.01$. The magnitude of the effect remains similar, indicating that even when another (extralegal) reason is included, less legitimacy toward the Court is expressed among individuals who find precedent to be inappropriate in justifying decisions. In other words, in line with Expectancy Theory, when an individual's expectations are violated, she ascribes less legitimacy to the institution, supporting H2.

Table 7. Predicting Legitimacy by Precedent Expectations Violation in Experiment 2.

	Model 1: Precedent only (Cell 1A)	Model 2: Precedent and other reasons (Cells 1A, 1B, 1C)	Model 3: Interaction with outcome disagreement (Cell 1A)	Model 4: Interaction with outcome disagreement (Cells 1A, 1B, 1C)
Expectations violation	−0.353* (0.106)	−0.276** (0.066)	0.106 (0.141)	−0.051 (0.093)
Disagreement with outcome	—	—	0.84 (0.499)	0.362 (0.336)
Expectations Violation × Disagreement	—	—	−0.620** (0.171)	−0.338** (0.120)
Constant	5.565** (0.283)	5.367** (0.181)	4.922** (0.363)	5.09 (0.245)
R^2	0.15	0.09	0.32	0.16
n	84	223	84	223

Note. Standard errors are in parentheses.
*$p < 0.05$. **$p < 0.01$.

It is worthwhile to also examine these results by looking at the interaction between expectations violations and agreement with the outcome of the case.

Experiment 1 showed that while legitimacy was not affected by the extra-legal reasons, there was a strong effect of support for the decision, whereby those who disagreed with the outcome conferred much less legitimacy upon the Court. In this analysis, we dichotomize the outcome agreement variable such that those who do not support the outcome (values less than the midpoint of the scale) are coded as "1" while those who are neutral or support the outcome (greater than or equal to the midpoint of the scale) are coded as "0." Thus, we have a binary measure of disagreement, which we interact with the precedent expectations variable to predict institutional legitimacy. This yields a positive and significant interaction, both in the precedent only condition (Cell 1A), $t(1, 83) = −3.63$, $p < 0.01$, and among all three precedent conditions (Cells 1A, 1B, and 1C), $t(1, 222) = −2.82$, $p < 0.01$. As shown in Figure 4, expectations violations only decrease legitimacy among those who disagree with the outcome.

That is, individuals who find precedent most inappropriate *and* disagree with the outcome of the case view the Court as least legitimate. Why might this be the case?

People who disagree with past decisions think the Court should overrule them; precedent should not be something the Court hides behind to make decisions that people view as incorrect. This aligns with the results of Experiment
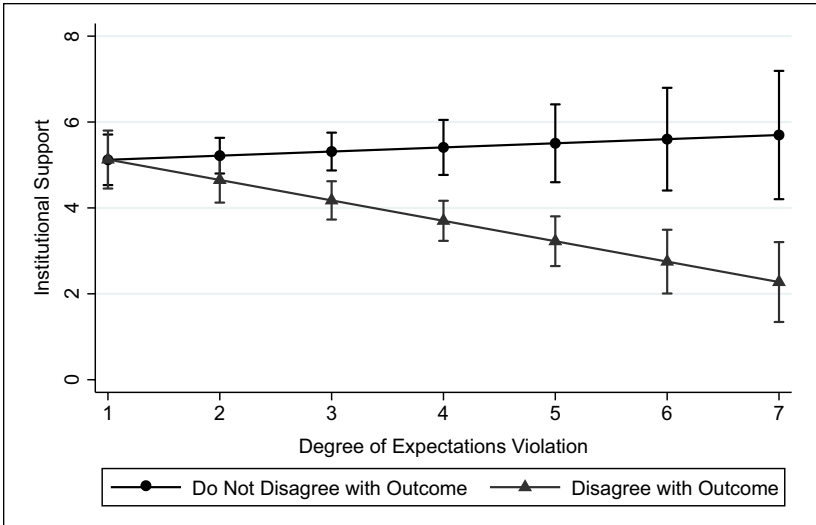
Figure 4. Predicting institutional support by precedent expectations violation and outcome disagreement.

1, whereby disagreement with the outcome of a case is the main factor predicting lower legitimacy.

Next, we repeat this analysis for moral reasoning.[14] First comparing the appropriateness of this reason to precedent, we find that individuals report that moral reasons are slightly more inappropriate to use ($M = 2.97$, $SD = 1.72$) than precedent ($M = 2.69$, $SD = 1.42$), $t(1, 1112) = -4.57$, $p < 0.01$. However, this tells us little about how individuals respond when their expectations are violated. To do this, we again predict legitimacy using only participants in the moral reasons only condition (Cell 2B). As shown in Table 8, there is a positive but non-significant effect, $t(1, 73) = 0.01$, $p = 0.99$.

When we add the legalistic and moral reasons condition (Cells 1B and 2B), this again yields a positive but non-significant result, $t(1, 146) = 0.12$, $p = 0.90$. Thus, even among those who most object to moral reasons being used in Court decisions, there does not appear to be any effect on institutional legitimacy. Furthermore, the interaction between expectations and disagreement with the outcome fails to reach significance, both when looking at the moral reasons only condition, $t(1, 73) = -0.42$, $p = 0.68$, and when looking at the legalistic and moral reasons conditions, $t(1, 146) = -0.55$, $p = 0.58$. Thus, moral reasons do not appear to affect the legitimacy of the Court even when individuals disagree with the outcome of the case.

Table 8. Predicting Legitimacy by Moral Reasoning Expectations Violation in Experiment 2.

	Model 1: Moral only (Cell 2B)	Model 2: Moral only, moral and precedent (Cells 2B and 1B)	Model 3: Interaction with outcome disagreement (Cell 2B)	Model 4: Interaction with outcome disagreement (Cells 2B and 1B)
Expectations violation	0.001 (0.092)	0.008 (0.069)	0.088 (0.208)	0.060 (0.101)
Disagreement with outcome	—	—	−0.069 (0.840)	−0.059 (0.501)
Expectations Violation × Disagreement	—	—	−0.098 (0.232)	−0.074 (0.135)
Constant	4.421** (0.349)	4.477** (0.251)	4.411** (0.741)	4.500** (0.381)
R^2	0.00	0.00	0.02	0.01
n	74	147	74	147

Note. Standard errors are in parentheses.
*$p < 0.05$. **$p < 0.01$.

Turning now to the effects of public opinion, participants reported that this reason is by far the most inappropriate for the Court to use ($M = 3.99$, $SD = 1.95$), significantly more so than moral reasons ($M = 2.97$, $SD = 1.72$), $t(1, 1112) = 16.27$, $p < 0.01$. Looking again at how expectations affect legitimacy, first at participants who received only a public opinion reason (Cell 2C), we again find a positive and non-significant effect, $t(1, 78) = 0.78$, $p = 0.44$, as shown in Table 9.

However, when looking at public opinion paired with legalistic reasoning (Cell 1C), the effect is positive and highly significant, $t(1, 65) = 2.74$, $p < 0.01$. These results indicate that as individuals' expectations regarding public opinion are violated to a higher degree, they view the Supreme Court as *more* legitimate, but only when a legalistic framework is also provided. While this is the opposite of what we would predict, it could be that while the public does not expect the Court to use public opinion reasons, they overlook violations to this expectation if the Court also uses a legalistic framework to justify their decision. In other words, the increased legitimacy associated with using precedent overcomes any decreased legitimacy stemming from their public opinion expectation being violated. Furthermore, when we look at the interaction between expectations and disagreement with the outcome of the case, the interaction fails to reach statistical significance among those only receiving the public opinion reason (Cell 2C), $t(1, 78) = 1.14$, $p = 0.26$, and among those in the public opinion and precedent condition (Cell 1C), $t(1, 65) = 1.20$, $p = 0.23$.

Table 9. Predicting Legitimacy by Public Opinion Expectations Violation in Experiment 2.

	Model 1: Public opinion only (Cell 2C)	Model 2: Public opinion only, public opinion and precedent (Cells 2C and 1C)	Model 3: Interaction with outcome disagreement (Cell 2C)	Model 4: Interaction with outcome disagreement (Cell 1C)
Expectations violation	0.057† (0.074)	0.117* (0.052)	0.151 (0.133)	0.208** (0.063)
Disagreement with outcome	—	—	−0.342 (0.689)	−0.222 (0.603)
Expectations Violation × Disagreement	—	—	-0.10 (0.155)	-0.050 (0.123)
Constant	3.971** (0.326)	3.923** (0.236)	4.16** (0.583)	4.037** (0.362)
R^2	0.01	0.03	0.08	0.13
n	79	145	79	66

Note. Standard errors are in parentheses.
†$p < .10$. *$p < .05$. **$p < .01$.

However, expectations remain significant among those receiving the public opinion combined with precedent treatment, $t(1, 65) = 3.28$, $p < 0.01$. Figure 5 displays these results among those in the public opinion and legalistic framework condition (Cell 1C), showing that the more individuals' public opinion expectations are violated, the more legitimacy they confer upon the Court.

Here, disagreement with the outcome does not result in significantly less legitimacy. Thus, it appears that the public may be pleasantly surprised when the Court does use public opinion in its reasoning. While they initially thought that public opinion was inappropriate, they may find it more justifiable when used in conjunction with precedent. Furthermore, the Court's use of public opinion might legitimize it as an appropriate basis for a decision in the eyes of the public. More importantly, however, this extralegal reason, like moral reasoning, does *not* decrease legitimacy toward the Court, providing further evidence that the Court's legitimacy does not suffer when it employs extralegal reasoning in its opinions.[15]

Discussion

The results of Experiment 2 replicate and extend Experiment 1 in showing that extralegal reasons do not harm the legitimacy of the Court, even when they are not paired with precedent (H1). Furthermore, even when individuals' expectations are violated and the Court uses extralegal reasons, legitimacy
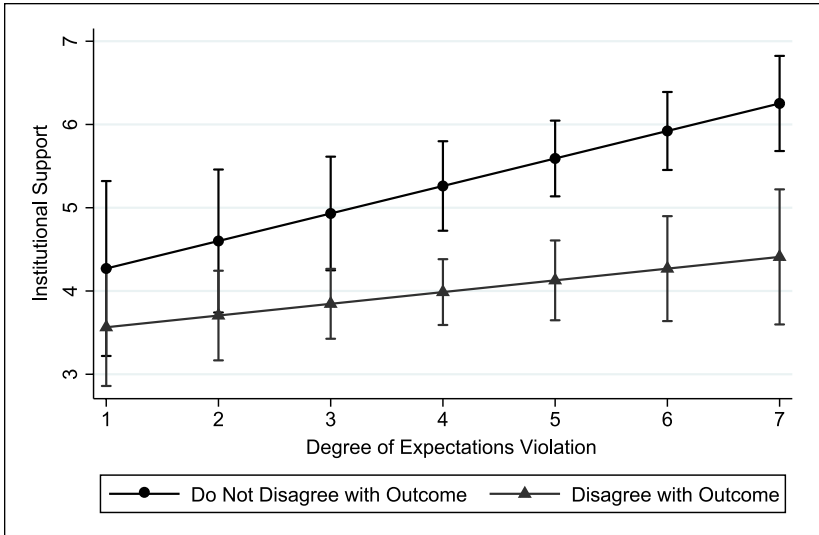
Figure 5. Predicting institutional support by public opinion expectations violations and disagreement with outcome.

does not fall, and may even rise as long as the Court sticks within a legalistic framework (H2). In addition, these results show that legalistic reasoning may, in fact, harm legitimacy when individuals (a) find these reasons to be inappropriate and (b) when they disagree with the outcome of the case. This is not true for extralegal reasons, however.

Conclusion

In this article, we examined whether a key component of judicial opinions (the sources used by the justices) could have an adverse effect on perceptions of the Supreme Court's legitimacy. Our results from two experiments in which we manipulate the sources used by the Court in an opinion indicate that attitudes toward the Court are stable. This further confirms the findings that legitimacy is very difficult to undermine (e.g., Caldeira & Gibson, 1992).

From a normative perspective, this is good news for those concerned that the Court might be doing itself harm by relying on public opinion or moral justifications for its legal decisions. Our results indicate that using these sources is harmless from a legitimacy perspective. That said, it is important to note that our study is unable to observe longitudinal effects. It is possible

that continued reliance on extralegal sources could diminish institutional legitimacy over the long run. However, we think this is unlikely; reliance on extralegal factors is not a new phenomenon.

Moreover, as both our results and the results from Gibson's (2012) survey of Kentuckians indicate, a nontrivial number of people expect (and are fully comfortable with) courts not to rely solely on legal factors in decision making.

Just as importantly, we find that individuals are more likely to view the Court as legitimate if the Court makes decisions individuals agree with (consistent with Bartels & Johnston, 2013), and this does not vary with the reasons provided in the opinion. Thus, mentioning moral reasons or public opinion does not reduce legitimacy in the eyes of people who disagree with the Court's decision.

Interestingly, relying on precedent does reduce legitimacy, suggesting that individuals who disagree with the Court think it should correct past erroneous decisions. There may indeed be factors that will cause individuals to question or rethink their perceptions of the legitimacy of the Supreme Court, but the reasoning offered by the Court in their judicial opinions is not generally one of them.

Appendix A

Experiment 1 Stimuli

1a. Precedent Only:

A decision handed down by the Supreme Court today declared actions taken by the government, including wiretapping, under the Foreign Intelligence Surveillance Act are legal. The opinion of the court stated that respondents—U.S. persons who claim that they engage in sensitive international communications—do not have standing according to the precedent set in a previously decided Supreme Court case (*Monsanto Co. v. Geertson Seed Farms*). In the Monsanto opinion, the court stated that an injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling. Speculation of future injury to third parties is not sufficient."

1b. Precedent and Moral—Add the following to 1a:

In addition, the court opinion states, "Aside from precedent, when such complicated questions arise, our moral beliefs serve to guide our decision that the government should protect the country from potential terrorism."

1c. Precedent and Public Opinion—Add the following to 1a:

The justices also cite recent poll results, whereby a majority of Americans report agreeing with these measures as a way to combat terrorism.

1d. Precedent, Moral, and Public Opinion:

1b and 1c are both added to 1a.

2a. Constitutional Only

A decision handed down by the Supreme Court today declared actions taken by the government, including wiretapping, under the Foreign Intelligence Surveillance Act are legal. The opinion of the court stated that respondents—U.S. persons who claim that they engage in sensitive international communications—do not have standing under Article III of the Constitution. To have standing, an injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling. Speculation of future injury to third parties is not sufficient."

2b. Constitutional and Moral—Add the following to 2a:

In addition, the court opinion states, "Aside from the Constitution, when such complicated questions arise, our moral beliefs serve to guide our decision that the government should protect the country from potential terrorism."

2c. Constitutional and Public Opinion—Add the following to 2a:

The justices also cite recent poll results, whereby a majority of Americans report agreeing with these measures as a way to combat terrorism.

2d. Constitutional, Moral, and Public Opinion:

2a and 2b are both added to 2a.

Appendix B

Experiment 2 Stimuli

[IF ASSIGNED TO LEGALISTIC + EXTRALEGAL CONDTION]: In a case involving campaign finance, the Supreme Court issued a ruling last

month that favored fewer restrictions on campaign contributions. Previously, the amount of donations individuals and corporations could make in a 2-year period was limited. The Court determined that this limit did not further the government's interest in preventing corruption, and that it restricted participation in the democratic process. The Court stated that one reason for their decision is based on precedent: "Prior decisions of this Court have held that a law cannot regulate contributions simply to reduce the amount of money in politics." **[ASSIGNED ONE OF THE FOLLOWING REASONS]**.

[1A: LEGALISTIC ONLY: NO ADDITIONAL INFORMATION]

[1B: PUBLIC OPINION]: In addition, the Court cited public opinion, stating, "Recent polls conducted on the case found that a majority of citizens feel that campaign contribution limits unnecessarily infringe upon the democratic process."

[1C: MORAL]: In addition, the Court cited moral reasons, stating, "Aside from past decisions of this Court, when such complicated questions arise, our moral beliefs serve to guide our decision that the government should not infringe upon the democratic process."

[IF ASSIGNED TO EXTRALEGAL ONLY CONDITION]: In a case involving campaign finance, the Supreme Court issued a ruling last month that favored fewer restrictions on campaign contributions. Previously, the amount of donations individuals and corporations could make in a 2-year period was limited. The Court determined that this limit did not further the government's interest in preventing corruption, and that it restricted participation in the democratic process. **[ASSIGNED ONE OF THE FOLLOWING REASONS]**.

[2A: NO REASON, NO ADDITIONAL INFORMATION]

[2B: PUBLIC OPINION]: The Court stated that one reason for their decision is based on public opinion, stating that "recent polls conducted on the case found that a majority of citizens feel that campaign contribution limits unnecessarily infringe upon the democratic process."

[2C: MORAL]: The Court stated that one reason for their decision is based on moral reasons, stating that, "when such complicated questions arise, our moral beliefs serve to guide our decision that the government should not infringe upon the democratic process."

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Supplementary Material

Online appendix is available on the American Politics Research website at http://apr.sagepub.com/supplemental.

Notes

1. We leave aside the oft-studied question of whether judges are controlled by these legal factors or whether their own personal policy preferences, public opinion, and so on, also shape their behavior. We are concerned here with the way in which judges justify their decisions, regardless of how they come to those decisions.

2. Our choice of public opinion and moral reasons as examples of extralegal arguments is guided by the existing literature. For example, Farganis (2012) reports that Justice Alito said at his confirmation hearing, "[T]he legitimacy of the Court would be undermined in any case if the Court made a decision based on its perception of public opinion" (p. 208). This sentiment is echoed by Marmor (2005). The same is true for religious/moral bases for decisions (Bobbitt, 1982). Indeed, in Justice Ginsburg's dissent in *Gonzales v. Carhart* (2007), she accuses the majority of using moral reasons to erode fundamental rights: "Ultimately, the Court admits that 'moral concerns' are at work, concerns that could yield prohibitions on any abortion . . . By allowing such concerns to carry the day and case, overriding fundamental rights, the Court dishonors our precedent" (p. 15). Ginsburg then proceeds to cite a string of cases in support of her claim. Therefore, both public opinion and beliefs about morality are realistic extralegal reasons that may be given in opinions and that can potentially influence the public's perception of the Court.

3. Scholars have also found that an individual's level of knowledge positively affects their perception of the Court's legitimacy (e.g., Caldeira & Gibson, 1992). In our experiment, we are concerned with the effects of the reasons a Court provides on legitimacy and how this relates to expectations. We are not concerned with the factors that affect legitimacy per se. Given our experimental setup, any differences in the level of knowledge of our subjects are controlled for via the randomization process.

4. Details on the results of an a priori statistical power analysis are contained in the online appendix.

5. While we did not explicitly hypothesize a difference between reasons based on precedent or the Constitution as it is not likely that individuals differentiate

between the two (at least as far as legitimacy is concerned), we do this to maintain ecological validity as real-world opinions may rely on one type of legalistic reasoning or the other.

6. http://www.gallup.com/poll/163043/americans-disapprove-government-surveillance-programs.aspx

7. http://www.gallup.com/poll/21058/slim-majority-americans-say-bush-wiretapping-wrong.aspx

8. The two dropped items were two statements taken from the Farganis (2012) index and not the more traditional index developed by Gibson and colleagues.

9. While it is possible that individuals could be driven to disagree with the case based on the manipulation (i.e., the reasons used to justify it), we believe this is not the case, as levels of agreement do not significantly differ across conditions.

10. We exclude those participants who answered at the midpoint of the scale, which indicates indifference toward the decision. Results obtained using the continuous measure in ordinary least squares (OLS) regression provide the same pattern of results.

11. There were no significant differences in race or party identification between individuals who completed both surveys and those who only completed the pre-survey. However, those who completed both surveys were slightly older ($M = 38$) than those who did not ($M = 34$), $t(1, 1191) = 4.42$, $p < 0.01$, and were slightly more liberal ($M = 4.54$) than those who did not ($M = 4.75$), $t(1, 1191) = 2.12$, $p = 0.03$. In addition, fewer men (40%) than women (48%) chose to complete the second survey, $\chi^2 = 8.17$, $p = 0.02$. However, note that none of these differences are substantively large.

12. The results remain consistent if these individuals are included in the analyses. In addition, excluded individuals do not systematically differ from non-excluded individuals on several demographic characteristics (e.g., age, gender, race, party identification).

13. Why might an individual feel that precedent is an inappropriate basis for a judicial decision? If someone believes the Court (either recently or in the past) made an erroneous decision, then precedent would not be a convincing reason to perpetuate a perceived error. For example, if one is against excluding evidence obtained as a result of an illegal search, the fact that the Court has said in the past that this evidence has to be excluded is not going to be persuasive.

14. We individually examine the type of expectations violation because participants are not assigned to more than one extralegal reason. For this reason, we estimate separate models for each treatment.

15. We also tested whether simply the sheer number of reasons was related to perceptions of legitimacy. That is, are more reasons better simply because there are more of them. There was no statistically significant relationship between the number of reasons and perceptions of legitimacy.

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