Judicial Legitimacy and the Dearth of State Supreme Court Knowledge

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JUDICIAL LEGITIMACY AND THE DEARTH OF STATE SUPREME COURT KNOWLEDGE

by

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ABSTRACT

As western democracies face challenges unseen since the Cold War ended, understanding the correlates of legitimacy for democratic institutions has grown in importance. While scholars have well-developed theories and empirical evidence of Supreme Court support, we know far less about state supreme court legitimacy. This is despite the fact that these courts hand down 100,000 legal decisions annually. Relying on an original survey conducted with participants in 46 states, I develop and test a theory that respondents rely on the Supreme Court as a cue when deciding whether they should extend legitimacy to state supreme courts they know next to nothing about. With this foundation, I examine several questions: First, how little do respondents know about state supreme courts and how does this ignorance influence the likelihood that they will extend legitimacy to these important institutions? Second, does the United States Supreme Court act as a heuristic for respondents who know little about their state supreme court when they are asked to decide whether they should extend legitimacy to state high courts? Third, does the recency of a state supreme court election alter any reliance on the Supreme Court as a heuristic informing state supreme court legitimacy among those with low knowledge of state high courts?
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CHAPTER 1
INTRODUCTION

The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!

—Tweet from President Donald Trump, February 4, 2017

By questioning the very legitimacy of Robart’s position as a judge, Trump is planting seeds in the minds of his supporters. These seeds will grow until a culture has developed in which it’s acceptable to not simply question the legal decisions of judges, but to undermine the judicial system at large if the proclamation of a judge does not comport with one’s understanding of the world. The puncture of such a fundamental part of our republic is insidious; it will have long-term repercussions.

—Frank Camp, The Daily Wire, February 5, 2017

In any event we are EXTREME VETTING people coming into the U.S. in order to help keep our country safe. The courts are slow and political!

—Tweet from President Donald Trump, June 5, 2017

Poll: Majority of people believe SCOTUS is split into parties

— USA Today, March 17, 2017

Understanding the sources of judicial legitimacy is important for democracies. This is increasingly so in an age of ever-growing political polarization that threatens to damage American courts. Add to this mix a president who takes less care in his discussions about the judiciary than many of his predecessors, and concerns about American judicial legitimacy appear well founded. In fact, to believe accounts from some journalists, the United States is nearing a polarized judiciary with plunging support from the public. It is at least some comfort that, in the CSPAN/PBS poll that USA Today references in the epigraph of this chapter, 57% of respondents thought that President
Trump’s criticism of sitting judges is either not very appropriate or not at all appropriate. Though, 42% thought it was either appropriate or very appropriate (Rosenblatt and Berland 2017). While other findings in the survey were troubling, including the 62% of respondents who agree that the Supreme Court is as split politically as Congress, the survey does include some supporting evidence that judicial legitimacy in the United States remains quite high, so much so that a clear majority disapprove of the president of the United States attacking a sitting judge. However, with all of the political tumult of the contemporary political environment, it is not surprising that public and scholarly interest in the legitimacy of institutions is on the rise.

Maintaining legitimacy among the governed, where the actions and decisions of the government are accepted even when individuals disagree with them, is essential for the success of democracy and the judiciary. Unlike the executive and legislature, the courts lack forceful means of coercion and, thus, rely upon legitimacy for compliance with their decisions. Within political science, scholars have examined the sources and structure of legitimacy in democratic government broadly (Easton 1965) and have placed sustained focus on the Supreme Court and the influence of knowledge, education, and judicial behavior as causal influences on judicial legitimacy (Bonneau and Hall 2009; Casey 1974; Gibson 2012; Gibson and Caldeira 2009a; Mondak and Smithey 1997). However, scholars are still uncovering the drivers of legitimacy in state supreme courts, with most studies focusing on the influence of elections. This focus on elections fails to account for an important piece of the judicial legitimacy puzzle: a great portion of the population is largely ignorant of state supreme courts. As a result, most scholarship focusing on state supreme courts fails to address the central question of how these courts
maintain legitimacy among individuals with low knowledge of these institutions.

State supreme courts decide more than 95,000 cases annually. Despite this enormous and far-reaching docket, not to mention the vast power associated with these institutions, we have an incomplete understanding of the sources and maintenance of state supreme court legitimacy. Despite much excellent work by scholars on the sources and correlates of judicial legitimacy in American courts, we have yet to fully reconcile evidence that state supreme courts maintain high levels of legitimacy among citizens largely ignorant of these institutions. This gap in scholarly knowledge makes it challenging to accurately estimate which activities may harm judicial legitimacy. This is an important problem in an age of increasingly politicized judicial elections in states where missteps threaten judicial legitimacy, judicial independence, and rule of law (O’Connor 2010). The present study begins the work of remedying our incomplete understanding by examining the influence of the Supreme Court on citizens’ decisions to confer legitimacy on state supreme courts. Here, I focus on whether citizens use their relatively superior knowledge of the Supreme Court, widely seen as a legitimate institution, as a heuristic for deciding whether to confer legitimacy upon a state supreme court about which they know far less.

To illustrate how the phenomenon may work in ways that scholars have yet to understand, I first turn to a state legislature as an example in Table 1.1. In 2010, the Republican Party took control of the United States House of Representatives and made gains in the Senate, fueled in part by frustration with President Obama and congressional Democrats. The state legislatures saw large Republican gains as well, with the party winning control in 18 chambers. The scope of the sweep at the state level follows the
contours of the federal results in size and geographic scope. In the election, voters punished Democrats at all levels of government. Polling from North Carolina provides evidence of this correlation as well.

The results of this poll, conducted by Public Policy Polling, show strikingly similar patterns, even as the national and state Democrats engage in different activities. At the national and state level, preferences are nearly identical for Congress and the state legislature across party. The results from this polling data provide some evidence that there are connections between opinions of what occurs at the federal level and at the state level. Going a bit beyond the data, I posit that this is evidence of a link between decisions voters make about the federal government and those they make about state institutions of which they know far less. While this link is likely driven, in part, by partisan preferences, especially given the electoral climate of 2010, the identical levels of support in the poll are striking given how different the two institutions are. If evidence of a relationship between federal and state legislatures exist, does a similar connection exist between federal and state-level courts in America? In particular, do voters make decisions on whether to confer legitimacy, the judiciary’s most important political capital, to state supreme courts based at least in part on what they know and think about the Supreme Court?

While it is still the least known federal institution, Americans appear to know more about the Supreme Court than state supreme courts, where the dearth of knowledge is quite pronounced. However, surveys indicate a similarity in levels of legitimacy

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1 In a year marked by conservative anger over Washington spending, the North Carolina legislature was steeply cutting spending to balance the budget as the state constitution requires. While Washington Democrats increased spending on a flurry of social programs, North Carolina Democrats were cutting funding for transportation and education.
between the courts. Roughly 69% of respondents in separate surveys confer legitimacy on both the Supreme Court and the Kentucky Supreme Court, despite lower levels of awareness of the state court (Gibson 2012). To date, the literature on state supreme court legitimacy tends to focus on state-level institutions as independent structures, free from influence from federal-level institutions as far as mass opinions are concerned.

Conversely, I argue that this is an unrealistic assumption because citizens lack adequate knowledge of state supreme courts. Instead, I posit that these similarities reflect reliance by some citizens on their opinions about the Supreme Court to supplement a lack of information about state supreme courts. Specifically, I argue that the state supreme courts are not independent actors in the minds of citizens when they are deciding whether or not to confer legitimacy. Easton (1965) argues that specific actions over time can either build or degrade institutional legitimacy. This work is the foundation on which judicial legitimacy studies are built. However, if citizens are not aware of the specific actions of an institution, how is that institution supposed to build legitimacy based upon those actions?

Much as individuals rely on partisanship and other cues to make voting decisions when they lack information, I argue that a similar process is occurring in the minds of individuals between state supreme courts and the Supreme Court. The public is more aware of the Supreme Court even if they do not possess encyclopedic knowledge of the institution (Gibson and Caldeira 2009c). This awareness, built over time through education and the media, appears to have created a large reservoir of legitimacy. That being said, these educational processes happen with much less regularity for state supreme courts. State supreme courts are covered less often in the news and many
government classes in secondary and higher education only provide a small introduction to those state institutions. Given this general paucity of education, meaning there is a larger portion of the public who lacks much knowledge and awareness of their state supreme courts, scholarly findings of robust state supreme court legitimacy are curious. The notions of legitimacy are likely not the result of knowing about the state supreme courts, as it appears to be with the United States Supreme Court. Instead, in this study, I argue that some individuals use the Supreme Court as a cue for extending legitimacy to state supreme courts in the absence of adequate knowledge of the state courts. The ramifications of a reliance on heuristics to confer legitimacy on little-known judicial institutions are potentially large for the courts, the judges that make decisions, and the shape those decisions take in an environment where many members of the public are largely ignorant of their existence.

With the broad powers of courts, it is understandable that judicial legitimacy is an important topic receiving attention from judicial scholars who examine the influence of specific Supreme Court decisions (Gibson, Caldeira, and Spence 2003; Hoekstra 2000), appointments to the Supreme Court (Gibson and Caldeira 2009a, 2009b), citizen knowledge (Gibson and Caldeira 2009c), and the role that legal reasoning and adherence to mechanical jurisprudence play (Farganis 2012; Gibson and Caldeira 2011). This scholarship indicates a public that, for the most part, extends a large degree of legitimacy to the Supreme Court, cutting across ideology and party identification. The key for judicial legitimacy appears to be that courts and judges behave as citizens expect them to. That is, citizens expect justices to be fair and impartial, and, importantly, to not behave like their more politically-motivated counterparts in other institutions. It is when judges
begin to appear similar to more politicized actors in the legislature or executive that the potential for damage to judicial legitimacy begins. The literature on judicial legitimacy, though, focuses on the Supreme Court, the judicial institution that receives the largest degree of scholarly and media attention. State supreme courts, while more numerous and responsible for vastly larger dockets, receive far less attention. Fortunately, there are theoretical foundations on which to build to bridge this problem.

Citizens appear to rely on cues when making decisions in low information environments (Lupia 1994), and I propose that a similar process occurs regarding state supreme court legitimacy. In the absence of knowledge sufficient to make an informed decision about whether to extend legitimacy to state supreme courts, I argue that citizens turn to a similar institution they know more about to serve as a cue. The Supreme Court is better known, is more widely covered than any other American judicial institution, and is largely perceived as legitimate. In this study, I argue that the legitimacy of the Supreme Court acts as a cue for citizens when deciding whether to extend legitimacy to state supreme courts. This project contributes to the literature on judicial legitimacy by including a new piece to the puzzle: the influence of heuristics. Next, I look at the scholarship on knowledge and the use of heuristics among individuals.

*Citizen Knowledge of Courts*

Studies of judicial legitimacy indicate that greater knowledge of the judiciary is correlated to some extent with conferring legitimacy. On the one hand, there is evidence that greater knowledge of the courts leads to citizens with unrealistic views of how the courts work (Casey 1974). However, greater knowledge also goes hand in hand with increased legitimacy (Gibson and Caldeira 2009d; Gibson, Caldeira, and Baird 1998).
Further, support for the judiciary does not evaporate when respondents with unrealistic views of a court governed by mechanical jurisprudence are presented with evidence of active legal realism (Gibson and Caldeira 2011). Another troubling aspect also emerges in the literature: a lack of knowledge of the courts also indicates a lack of ability to distinguish the courts from other political institutions, a distinction that is key to conferring judicial legitimacy (Gibson, Caldeira, and Spence 2003). Given this relationship between knowledge and legitimacy, the potential trouble for the courts is clear. The distinction between the courts and the other political institutions is a key component of judicial institutional loyalty, and if individuals are not able to make this distinction, the threat to judicial legitimacy increases.

The studies of knowledge that focus on the courts provide a double-edged sword: there is evidence that citizens are more knowledgeable than generally given credit for when it comes to the Supreme Court, but most studies that examine knowledge of the judiciary are limited to the federal high court. Gibson and Caldeira (2009d) demonstrate that previous studies that claim the American public is ignorant of the courts suffer from key design flaws. In particular, they point out that the recall approach used in many studies, including the oft-cited American National Election Studies (ANES) surveys, is an inaccurate way to measure knowledge. In the past, the ANES relied on open-ended questions, which is not the most accurate method to capture knowledge of political institutions. Instead, Gibson and Caldeira point to evidence that closed-ended questions that provide a bit of information and a frame of reference in the question are a superior alternative. A survey environment where there is more information available to

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2 “To know it is to love it,” say Gibson and Caldeira about the relationship between knowledge and the courts (2009d, 437).
respondents more closely reflects how individuals operate in their daily lives when thinking about politics (Lupia 2006). Individuals rarely think about politics without access to information, and studies that use closed-ended questions provide evidence that citizens are more knowledgeable about the Supreme Court than results using simple recall questions indicate (Gibson and Caldeira 2009d; Mondak 2001). In the Gibson and Caldeira (2009d) study, the results show that between 57% and 74% of respondents correctly answered questions about judicial appointment method, the term length of justices, and the power of the Supreme Court to have the final word on constitutional questions. These results are heartening, and the high levels of legitimacy of the Supreme Court make intuitive sense in light of this evidence that citizens have a reasonable amount of knowledge about the institution. However, these studies focus on the Supreme Court in the United States. Studies of state supreme court knowledge reveal a public that is considerably less knowledgeable.

Moreover, studies of state supreme courts and judicial legitimacy focus in large part on elected judges. This is understandable, of course, since a large majority of states have selections systems where judges may face some type of election.\(^3\) Despite the widespread use of elections, citizen knowledge of state courts appears to be quite low. Studies of state court elections and ballot roll-off indicate that elections with partisan labels result in lower ballot roll-off than nonpartisan elections: evidence of potential reliance on partisan cues in state judicial elections by the public (Hall 2007). Challengers to incumbent judges also increase awareness (Bonneau and Hall 2003), and voters appear

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to consider legal experience when evaluating challengers to incumbent judges (Hall and Bonneau 2006). But even in contests receiving greater attention and participation from the electorate, there remains some degree of ballot roll-off. Additionally, engaging in electoral behavior has the potential to blur the distinction between the judiciary and other political institutions even while there is evidence that elections may actually enhance legitimacy (Bonneau and Hall 2009; Gibson 2012; Gibson et al. 2011; Gibson and Caldeira 2012). 4 These findings are useful, but they also present a puzzle: even in situations where judicial candidates are receiving the most attention, there is evidence that knowledge is still low in comparison to other institutions. Further, few of the studies attempt to deal directly with the lack of knowledge about states supreme courts.

Gibson’s (2012) book offers some important insights into levels of knowledge of one particular state supreme court. A 2006 survey of Kentucky voters used closed-ended questions to test knowledge of the state’s supreme court. The results indicate that:

- Only 24% of respondents correctly answered that Kentucky judges are elected.
- 32.9% correctly answered that the judges serve a fixed term.
- 45.6% correctly answered that the justices are the final word on the state constitution (Gibson 2012, 74).

There were no judicial elections in Kentucky while this survey was in the field, so that may partially reflect the low correct responses, but the results are not encouraging. In a separate 2008 national survey, 45% of respondents admit they do not know whether their state supreme court judge is elected or appointed nor the length of the term they

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4 Concerns about electing judges has sparked a considerable debate among legal scholars. See Frederick and Streb 2011, O’Connor 2010, and Streb and Frederick 2009.
serve (Gibson 2012, 196). The same survey finds a low number of respondents who know their state’s selection method. The correct answers range from around 34% in partisan and nonpartisan elections to 45% in merit systems with retention elections, and only 27.4% in states with gubernatorial appointments. Despite this low level of knowledge of state supreme courts, the literature indicates that these courts are generally considered legitimate institutions (Benesh 2006; Cann and Yates 2008; Gibson et al. 2011; Gibson 2012; Gibson and Caldeira 2009a, 2012). Moreover, not only are they perceived as legitimate, the legitimacy of the state supreme courts appears to mirror that of the Supreme Court. Given the evidence that indicates knowledge of courts is at least partially related to institutional loyalty to courts, how do we reconcile low knowledge and high legitimacy for state supreme courts?

Gibson (2012) argues that legitimacy of state supreme court is more nuanced than merely having knowledge of that specific court. In his study, he finds evidence that level of education and support for democratic values offer the strongest positive relationships with institutional support, suggesting that “those with the ability to understand the role of the judiciary in a democratic system and who are committed to the rule of law, democracy, and due process are more likely to extend legitimacy to this court” (2012, 84). This is similar to findings from studies of the Supreme Court indicating levels of knowledge, education, and support for democratic values are key to understanding

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5 69.1% of Kentucky respondents do not support “doing away with the [state supreme] court,” while 68.9% of Americans say the same about the Supreme Court. 41.9% would limit the jurisdiction of the Kentucky Supreme Court against 51.4% of national respondents who would limit the Supreme Court’s jurisdiction. 65.9% of Kentucky respondents offer that the state supreme court is worthy of their trust, while 65.5% of Americans say the same about the Supreme Court (Gibson 2012, 76).

6 Gibson (2012) operationalizes support for democratic values using three variables: support for the rule of law, support for liberty over order, and support for democratic values.
legitimacy in the judiciary (Gibson 2007). In both cases, Gibson offers that citizens are extending legitimacy based on their understanding of the judiciary as being a unique and special political institution that is not politicized in the way that the legislative and executive branches are. The concept that the judiciary is unique is key to understanding institutional support for the courts. The source of this idea that courts are unique appears to be education, knowledge of courts, and support for democratic institutions and values. This relationship between support for democratic values, education, and knowledge with Supreme Court legitimacy makes sense, but the much lower levels of knowledge and public awareness of state supreme courts indicate that something else may be at play.

In the rest of this study, I develop and test a theory of state supreme court judicial legitimacy that accounts for low knowledge among a large portion of the public. In the theory chapter, I develop a theory that state supreme court legitimacy is dependent, at least partially, on the United States Supreme Court acting as a cue among members of the public who possess low knowledge of their state high courts. While individuals with greater knowledge of their state supreme courts are able to distinguish their state high courts from other courts for the purposes of conferring legitimacy, individuals without knowledge of those institutions must instead rely on a cue to overcome their ignorance. Building on legitimacy theory and heuristics scholarship, I argue that individuals with

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7 In the 2007 article, Gibson offers the following causal process: “If I am allowed to take some liberties in moving away slightly from the data, the causal process involved here seems relatively clear. Citizens who are better educated learn more about the Supreme Court and the democratic theory in which the Court is embedded and sustained. I suspect that the primary content of the learning is to stress that ‘courts are different.’ They are relatively nonpolitical, and judges make decisions on the basis of principled criteria—impartiality, for instance—without regard to self-interest (even the self-interest of being reelected or reappointed). This knowledge predisposes people to accept the viewpoint that courts have a distinctive role in a democracy and that role is not necessarily to mollify the preferences of the majority. The reason democratic values and court support are so closely connected is that supporting a court—an institution that often tells the majority that it cannot do that which it very much wants to do—requires a relatively sophisticated understanding of democratic theory” (531-532).
low knowledge of state supreme courts rely on the United States Supreme Court as a heuristic to guide whether they confer legitimacy on their state high courts. I derive hypotheses to test the theory that I develop with a focus not only individuals with low knowledge of state supreme courts, but also on the electoral context in which those decisions to confer legitimacy occur. In the theory chapter, I also describe the data collection process. I rely on a convenience sample from a survey distributed in 46 states. Survey respondents are randomly assigned into five groups to receive one of four experimental treatments. The four treatments are designed to stimulate respondent thought about the United States Supreme Court in different contexts. After receiving the treatment, respondents are given an index that measures their state supreme court knowledge. The fifth group receives no treatment and serves as a baseline for comparison.

In the first empirical chapter, I review the results of respondent knowledge questions asking about state supreme courts, finding generally that respondents know far less about their state supreme courts than they do about the United States Supreme Court. In this chapter, I examine how the convenience sample I use compares to the larger population in the United States. Generally speaking, a majority of respondents appear knowledgeable to some degree about the Supreme Court, while a notably smaller portion of respondents are knowledgeable about their state supreme court. With this evidence that supports my hypothesis that there is widespread ignorance of state supreme courts, even among individuals who are knowledgeable about the Supreme Court, I turn in the next two chapters to test the remaining hypotheses.

The second empirical chapter tests the primary theoretical contention of this
project: finding evidence that the Supreme Court acts as a cue for state supreme court legitimacy. In the survey, respondents are given a three-question index of state supreme court knowledge questions. Respondents are divided between those who cannot answer even one question correctly and those who answer one or more questions correctly. Relying on OLS regression for the analysis, I find results that provide support for my theoretical argument that the Supreme Court acts as a cue for those individuals who cannot answer even one question about their state supreme court correctly. However, among individuals who answer one or more questions correctly, the Supreme Court does not appear to act as a cue.

In the final empirical chapter, I test the influence of elections by relying on the temporal proximity of the 2016 election. In this chapter, I take advantage of the same knowledge model as before, where respondents who cannot answer even one question correctly are separated from those who answer one or more correctly. I further divide the groups by whether or not they live in a state with a judicial election in November 2016, two months prior to the survey being in the field. Again relying on OLS regression for the analysis, the results indicate that the presence of an election seems to alter the reliance on the Supreme Court as a cue among respondents who answer zero state supreme court knowledge questions correctly. This is evidence that the campaign and election process may have some influence on individuals who cannot correctly answer the knowledge questions in the survey, but who may at least temporarily possess greater awareness of their state supreme court as a separate legal institution.

In the final chapter, I focus on the implications of this research for future scholarship, what this means about judicial legitimacy in the United States, and what this
might mean for other government bodies that are not well known. This study indicates that scholars should take individual ignorance of state supreme courts seriously and account for this lack of knowledge in future studies of state supreme court legitimacy. These results also indicate that, in the United States, there is a large segment of the population that knows little about important judicial institutions, and those people rely in part on what they know about the Supreme Court when making judgements about their state supreme courts. In the event that the United States Supreme Court were to lose legitimacy, the negative influence of such a loss appears to have the potential to cascade throughout the entire judicial structure in the United States. Finally, if individuals are relying on this Supreme Court cue to overcome their lack of knowledge about their state supreme courts, it seems possible that a reliance on cues exists for state level legislative and executive institutions as well. These results have potential implications, not just for political science scholars, but also for the individuals who make up those institutions and the public who must live with the policies they create.
Table 1.1: A Survey of Support for Congress and the North Carolina Legislature

<table>
<thead>
<tr>
<th></th>
<th>Congress</th>
<th>State Legislature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic</td>
<td>42%</td>
<td>42%</td>
</tr>
<tr>
<td>Republican</td>
<td>51%</td>
<td>50%</td>
</tr>
<tr>
<td>Undecided</td>
<td>7%</td>
<td>8%</td>
</tr>
</tbody>
</table>

September 23-26, 2010  
N = 681  
MOE = +/- 3.8%
CHAPTER 2

A THEORY OF STATE SUPREME COURT LEGITIMACY

Scholars devote a great deal of attention to judicial legitimacy as well as the correlates of that legitimacy. Initial findings indicated that knowledge of courts appeared to correlate with support for those judicial institutions while later works suggest that judicial knowledge is a weak predictor of judicial legitimacy. Scholars instead explore other factors, such as the influence of court decisions, the politicized appointment process, the influence of support for democratic values, and the impact of judicial campaigns.

However, I argue that, in these pursuits, scholars overlook the crucial role that ignorance may play in conferring legitimacy on lower courts. Surveys show that while members of the public have reasonably high levels of knowledge about the Supreme Court, they are largely ignorant of state supreme courts. Understanding how people overcome this ignorance to confer legitimacy on institutions they know nothing about is crucial for a complete understanding of support for state supreme courts overall. In this chapter, I develop and propose a theory that the public relies on the Supreme Court as a heuristic when deciding whether or not they should confer legitimacy on their state supreme court.

\[8\] I follow the lead of other judicial scholars and use diffuse support, judicial legitimacy, institutional loyalty, and institutional support interchangeably (see Gibson 2012, 183).
Legitimacy Theory

Institutional Legitimacy Defined

The judiciary broadly and Supreme Court specifically wield enormous power in the United States, reinforced in large measure by a significant well of public support, or legitimacy. Judicial scholars tend to conflate legitimacy as a concrete measure of institutional loyalty to courts with the abstract concept of diffuse support, which emerges from the work of David Easton. Easton’s pioneering work in the field of institutional legitimacy yielded two important concepts: diffuse support and specific support (Easton 1965, 1975). Easton describes diffuse support as forming a “reservoir of favorable attitudes or good will” that allows individuals to tolerate actions or decisions they do not support by an institution, allowing diffuse support to be “independent of the effects of daily outputs” (1965, 273). In other words, institutions rely not on approval of any single decision, but instead on general loyalty to the institution even when it makes decisions the public disapproves of.

Specific support instead is the approval or disapproval of a given action. For example, specific support in the judicial context might be an individual supporting a singular decision by a court, while diffuse support is loyalty to the judiciary even in the face of a decision or series of decisions that an individual may disagree with. Diffuse support is the type of support that endures over time, while specific support changes depending on the particular output of the court. All governing institutions require legitimacy in order to function effectively, in no small part because it is sometimes essential to take unpopular actions. As Gibson and Nelson (2016) put it:

Legitimate institutions are those recognized as appropriate decision-making bodies even when one disagrees with the outputs of the institution; their decisions are respected, enforced, and implemented even in the face of dissent. To be
effective, courts need legitimacy—the leeway to go against public opinion (as, for instance, in protecting unpopular political minorities). (3)

Legitimacy theory is generally accepted among political science scholars, and I make no challenge to it here. Instead, in this chapter I examine the works on legitimacy theory and focus in on scholarly debates that revolve around factors that may enhance or harm legitimacy. This is even more important for the courts where, even in states that select judges by popular election, they do not receive the legitimacy-enhancing effects of elections as often as other institutions of the government, if they do at all.

Judicial Legitimacy in the United States Supreme Court

Studies of Supreme Court legitimacy indicate that the public has a great deal of loyalty to that institution. However, this was initially not well understood due to measurement error of the concept of diffuse support. Relying on a survey collected by Gallup, Berkley and Michigan Research Centers, and the Wisconsin Survey Research Laboratory, Dolbeare and Hammond (1968) examine the influence of partisanship, ideology, and region on respondents who have a favorable opinion of the court. They focus on evidence that individuals appear to lack knowledge of the Supreme Court, and their results indicate that partisanship is a driver of favorable opinions. Kessel (1966) finds broad support for the Supreme Court, which was reinforced by decisions the court made, rather than harmed by critics of court actions. Murphy and Tanenhaus (1968) also find broad support for the Supreme Court using a measure of diffuse support that more accurately captures the theoretical concept. They find that increasing knowledge of the

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9 Unpopular actions can be actions that large majorities disagree with (i.e., the TARP legislation in 2008 that provided funds to failing banks). These unpopular actions can happen more frequently to the courts, where any given decision may be met with approval or disapproval by any given demographic, depending on the details of the case.
court has no measurable influence on diffuse support, but increased knowledge has a positive influence on the percentage of the population willing to perceive major changes by the court as legitimate.\textsuperscript{10}

The work by Murphy and Tanenhaus (1968) laid the foundation for conceptualizing diffuse support in a way that was measurable and conceptually distinct from specific support. Scholars examine the influence of ideology (Bartels and Johnston 2013; Caldeira 1986; Gibson and Nelson 2015), opinion content (Farganis 2012), knowledge of the court (Caldeira 1986; Caldeira and Gibson 1992), as well as the influence of the confirmation process (Gibson and Caldeira 2009a, 2009c) on judicial support. Generally speaking, the findings from these works indicate that the Supreme Court enjoys a huge reservoir of support, even in the face of decisions as contentious as the 2000 \textit{Bush v. Gore} decision (Gibson, Caldeira, and Spence 2003) and in the contemporary polarized polity (Gibson 2007a). Attitudes about the Supreme Court also appear to be fairly realistic. Early evidence that individuals were ignorant of the Supreme Court was upended when Gibson and Caldeira discover measurement error in answering open-ended questions as well as generally high levels of knowledge when respondents answer multiple choice questions (Gibson and Caldeira 2009e). Emerging from this scholarship is evidence that the strongest drivers of institutional support are education (Caldeira and Gibson 1992; Handberg and Maddox 1982) and support for democratic values (Caldeira and Gibson 1992). Caldeira and Gibson develop these theoretical mechanisms in the theory of positivity bias.

\textsuperscript{10} They asked: “Some people think that the Supreme Court gets too mixed up in politics. Others don’t feel that way. How about you? Do you think the Supreme Court gets too mixed up in politics or not?” (1968, 373). This question is one of several commonly used today to create an index of support for the court.
Positivity Bias and Expectancy Theory

The theory of positivity bias provides a mechanism for individuals to frame the political conflicts of the day (Gibson and Caldeira 2009a; Gibson, Caldeira, and Spence 2003). This theory postulates that some judicial event captures the attention of the public, like a confirmation hearing, controversial decision, or judicial election. This event awakens dormant attitudes about the courts that have been built over time, including the information that the courts are a different type of political institution from the legislature or the executive. This reminder that courts are a different type of political institution initiates a switch in thinking from a policy perspective to a different dimension that the authors dub a judiciousness model. Based upon role theory where actors in any given institution are subject to expectations about their behavior (Gibson 1981), judiciousness acts as “an alternative to ideology as a criterion for preference formation and is based on the qualities the respondent views as important for being a good judge” (Gibson and Caldeira 2009a, 80). Further, Hansford, Intawan, and Nicholson (2018) find evidence that survey respondents perceive the Supreme Court as less political than Congress but more so than local traffic courts, and this perception is tied to diffuse support. The distinction between the courts and other political institutions is vital to the theory of positivity bias. If the exposure to the courts reinforces the judiciary as a different type of institution from the legislature or executive, where actors routinely engage in behavior the public finds distasteful, then support for the judiciary is strengthened. However, activities that make

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11 Grosskopf and Mondak (1998) offer a theory of negativity bias where institutional support is harmed when the Supreme Court takes an action that the public does not like. However, this research is at odds with the large amount of research showing strong levels of institutional support.

12 The activities in which executives and legislators engage that the public may find distasteful include fundraising, making deals, and an appearance of motives that go beyond merely acting in the best interest of the public.
the court appear more like the other political institutions possess the power to harm judicial legitimacy.

The difference between the courts and other political institutions is key to the theory of positivity bias, and Gibson and Caldeira expand on this distinction with what they call expectancy theory (2011a). Importantly, individuals understand that the role of the judiciary contains a policy-making component and that discussion of philosophy and ideology by judges is acceptable. These activities are acceptable to the public so long as judges maintain the appearance of being fair and impartial arbiters of the law. Gibson explains that expectancy theory begins with individuals varying in their expectations of the appropriate behavior of judges. Members of the public assess the activity of judges against their own expectations and any “dissatisfaction diminishes legitimacy accorded to the court” (Gibson 2012, 111). The source of institutional legitimacy is the expectation that judges make fair and impartial decisions during the procedural component of any case. However, “fair and impartial” may mean different things for different people, and they may vary in their preferences when the choice becomes, for example one of rule of law versus fairness versus broader societal values (Gibson 2012, 89–90). While expectations may lack consistency or even coherence in some cases, it does not change the fact that individuals possess expectations, and violating those expectations has the potential to harm judicial legitimacy. Expectancy theory, in particular, points to a general support for democratic values.13 How then, does this evidence fit together to form a general theoretical understanding of judicial legitimacy?

To recap: Gibson and Caldeira argue that the public holds certain expectations for

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13 Gibson offers that support for the courts is grounded in support for democratic institutions and processes, political knowledge broadly, and court knowledge specifically. (Gibson (2012, 83).
judges and that those expectations generally include a fair and impartial process that is distinct from the processes found in other political institutions. If judges violate that process, they risk harm to judicial legitimacy. However, due to the different nature of the courts, individuals extend to the judiciary a positivity bias akin to a benefit of the doubt because people believe they should receive a fair hearing in the court. Confirmation hearings where interest group ads take a side and appear to politicize the court have the potential to harm legitimacy of the Supreme Court (Gibson and Caldeira 2009a, 2009c). This extends to state judicial campaigns with politicized ads (Gibson, Gottfried, Carpini, et al. 2011) or the appearance of unseemly fundraising (Gibson and Caldeira 2012).\footnote{Nelson and Gibson distinguish between politicization of the courts and political decisions. Politicization is “the degree to which individuals view a Court or its judges acting like ordinary politicians, most prominently by believing that they engage in strategic or self-interested behavior” (Nelson and Gibson 2016, 21). This is distinct from political decision making, along the lines of behavior described by the attitudinal model.}

Conversely, elections themselves do not alone appear to be harmful to judicial legitimacy (Gibson 2012). This literature broadly demonstrates the correlates of judicial legitimacy, generally at the federal level. I next turn to studies that explore state supreme court legitimacy.

\textit{State Supreme Court Legitimacy}

The literature on state supreme court legitimacy largely focuses on the influence of state court elections on legitimacy for those institutions. Benesh (2006a) and Cann and Yates (2008) break ground in this area and find evidence that respondents in states with judicial elections have lower confidence in their courts than those in states without elections. Support for this argument that elections may harm legitimacy extends beyond the political science literature to high-level jurists like Justice Sandra Day O’Connor.
(O’Connor 2010).

As Benesh (2006) noted, she starts with a relatively clean slate in her article on state court legitimacy as few scholars before her pay it much attention. The dependent variable she employs is a categorical variable that assesses confidence in state supreme courts by asking respondents, “What is your level of confidence in the courts in your community?” and offering a four-point scale from no confidence to a great deal of confidence (2006, 701). There are two initial flaws in the design. First, the survey question about confidence is more likely to elicit specific support rather than the diffuse support that indicates institutional loyalty. Second, the question asks about confidence in local courts. Benesh, as she herself notes, makes an interpretive leap by assigning this same confidence to state supreme courts, as she was limited by the survey data available. The results indicate that experience with and knowledge of courts, perceptions of fairness about court procedures, and institutional designs created a constellation of factors that influence support for state supreme courts.15 Particular among them is the influence of institutional design. Respondents in states with partisan elections had less confidence in their state high courts than survey takers in other states. Given the large number of states who elect their state supreme court judges via partisan elections, this is an important finding. However, Gibson, Caldeira, and Spence (2003) develop and deploy an index that measures support for the courts in a more nuanced way that is a closer match to the concept of diffuse support than the measure Benesh employs. Because Benesh’s measure appears to capture specific support rather than diffuse support, it is not surprising that she

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15 Brace and Hall (1990) and Hall and Brace (1989) argue that institutional design influences judicial decision making on state supreme courts. However, Owens et al. (2015) find evidence that state selection method has no influence on the likelihood that the US Supreme Court will review and reverse a decision by a given court.
finds such variability.

Cann and Yates (2008) produce a survey with a dependent variable similar to Gibson, Caldeira, and Spence (2003) and find results that indicate partisan elections harm the legitimacy of the courts as well. The Cann and Yates (2008) model includes a variable that codes respondents with a dummy variable indicating whether they live in a state with partisan elections, nonpartisan elections, or merit selection, with remaining selection methods as a baseline. Only the partisan election variable is significant, and it indicates that it has a negative influence on diffuse support. However, as Gibson (2012) points out, this is not quite a direct test of the influence of campaigns and elections on state supreme court legitimacy. In his 2012 book on the state supreme court of Kentucky, Gibson finds that campaign activity can actually enhance diffuse support for state supreme courts. He conducted a survey during a campaign season where respondents were exposed to ads and information about the candidates as experimental treatments. The results indicate that, while elections can enhance legitimacy of state supreme courts, they only do so as long as judges do not appear to be politicized by the process.\textsuperscript{16} Once they do, the election effect reverses and becomes negative.\textsuperscript{17}

While scholarly work on state supreme court legitimacy remains relatively infrequent, the results thus far indicate that, similar to the US Supreme Court, state supreme courts possess a good deal of diffuse support. Conversely, knowledge of state supreme courts is far lower than that of the Supreme Court. Gibson and others follow a

\textsuperscript{16} I refer here to the concept of a political court versus a politicized court.

\textsuperscript{17} A large literature developed around the influence of elections at the state supreme court level that did not have to do with legitimacy, per se, but did find that the fears that elections are corrupting and negative are overblown. See Bonneau (2004, 2005), Bonneau and Hall (2009), Bopp and Neeley (2008), Brace and Boyea (2008), and Hall (1992, 2001).
practice when researching court legitimacy at the US Supreme Court, state supreme court, and international high courts of setting apart those members of the public who are not attentive to the court to either exclude them from the analysis (Gibson 2012, Gibson, Caldeira, and Baird 2003) or examine them separately (Gibson and Caldeira 1995). Depending upon the type of analysis, either is defensible and theoretically rigorous. However, my analysis of state supreme courts focuses on the reality of an environment where there is a Supreme Court about which the public has generally high levels of knowledge and a state supreme court about which they have very low levels of knowledge.

I follow the lead of Gibson and Caldeira (1995), Cann and Yates (2008), and Converse (1964) in arguing that members of the public at the lower end of state supreme court knowledge are thinking differently than others with greater knowledge. In this project, I am interested in the people with the least knowledge of state supreme courts and how their though process works regarding conferring legitimacy to state high courts. Along these lines but in a separate literature, scholars find evidence that the public relies on cues, or heuristics, to make decisions when they lack thorough knowledge to do so. I argue that some members of the public are relying on cues when they decide to extend legitimacy to state supreme courts about which they have very little knowledge. To explore this further, I next turn to studies of knowledge in the broader American democracy and explore the ways in which individuals make decisions when they are ignorant or ill-informed.
Political Knowledge in the Broader American Democracy

At first glance, it seems a logical assumption that a successful democracy requires an informed public. In truth, the theorized need for an informed public runs counter to the empirical evidence that depicts widely ignorant members of the public in an otherwise functioning democracy. The conflict between the knowledge elites possess and a government designed to incorporate the will of less-knowledgeable masses is evident in the early debates and designs of the American Constitution. In *The Federalist Papers No. 68*, Hamilton writes that getting “a sense of the people” is necessary when electing a president but that the electors are “most capable of analyzing the qualities adapted to the station…” (Hamilton, Madison, and Jay [1788] 2008). The founders designed a congress with senators selected by state elites to serve as a buffer against the passions of the House of Representatives specifically and the people generally. Given the later American success, others see the concern as slightly overblown. Schattschneider writes that “nobody knows enough to run the government” and that concern with a fully informed public who knows everything are a “road to insanity” (1960, 133). There is empirical evidence to support the thinking of both sides.

Scholarship on Individual Knowledge

Empirical evidence for individual ignorance is plentiful. Campbell et al. (1960) argue that members of the public are not terribly knowledgeable or issue-driven, relying instead on a social-psychological model that envisions a funnel of causality toward vote choice that is based on long-term partisan attachments developed from parents. Downs points out that the costs to obtaining information are high and that it is irrational to be well-informed because “the low returns from the data simply do not justify their cost in
time and other scarce resources” (1957, 259). Converse argues that evidence from surveys indicates that the public lacks a clear understanding of what ideology is and relies on other tools to overcome this deficit (1964). Not all scholars in this earlier debate agree, with Key in particular writing that “voters are not fools” (1966, 7).

Converse (1964) focuses on ideological constraints and argues that the mass public does not have the capacity to develop an organized set of beliefs on political issues. However, Nie and Andersen (1974) point out that Converse depends on data from 1958 and 1960. They argue that a longer time series would be more reliable and point to their own research showing that measuring a longer period of time provides evidence of shifting partisanship and ideology, indicating a shift in preferences and thought about the topics. Peffley and Hurwitz (1985) take issue with Converse’s operationalization of constraint, finding that respondent views are constrained by abstract beliefs while Achen (1975) finds a number of problems with question design and measurement errors. Still others point to evidence that Converse’s findings may not be time bound as many claim (Bishop, Oldendick, and Tuchfarber 1978).

Studies of political sophistication, or the degree to which individual belief systems are highly constructed and constrained in the sense that Converse describes, find evidence that most individuals are not sophisticated (Luskin 1987) and that this is primarily due to levels of interest and intelligence (Luskin 1990). However, Key (1966) and Fiorina (1981) argue that people are not as hopeless at the individual level as some might assume and that voters engage in retrospective voting, rewarding candidates based

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18 Which is to say that “if a person is opposed to the expansion of Social Security, he is probably a conservative and is probably opposed as well to any nationalization of private industries, federal aid to education, sharply progressive income taxation, and so forth” (Converse 1964, 3).
on individual, personal experiences. At the same time, these studies offer a fairly grim analysis: intelligence, lack of interest, and information costs all appear to obstruct information processing.

Debates over evidence of ignorance extend to studies of the courts as well. Lupia (2006) points out that many scholars test ignorance on questions they think that respondents should know, rather than studying what individuals really need to know to make informed decisions. Gibson and Caldeira (2009) report that perceptions of the public’s ignorance are partially a result of poorly designed surveys that ask open-ended questions. Given questions with multiple-choice options, more respondents correctly answer questions on how justices are appointed, whether they serve a life term, and whether the state court has the final say on the United States constitution (433).¹⁹ This concern about open-ended questions in the American National Election Study (ANES) survey led to an investigation by Krosnick, Lupia, DeBell, and Donawoski (2008).²⁰ They found that ANES surveys in prior years suffer not only from use of open-ended questions to test knowledge, but also systematic error in coding answers as incorrect that by any reasonable standard were correct, if imperfect. Condemning the American public as completely ignorant is too simple, but claiming they are adequately informed is not supported by the evidence. How individuals navigate this ignorance is the next topic of this study.

¹⁹ Correct responses range from 56.8% saying the Court is the final word on the constitution to 73.9% of respondents who correctly answered that justices are appointed.
²⁰ The investigation began after James Gibson and Gregory Caldeira reached out to the ANES and the results were reported in 2008, even as Gibson’s article on the subject was not published in the Journal of Politics until 2009.
The tension between the predictions of Madison, the differing empirical results of tests of respondent knowledge, and the reality of functioning American democracy generated a literature to understand how individuals process information when cognitive bandwidth is limited. Zaller and Feldman (1992) and Zaller (1992) develop the RAS, or memory model. The RAS model (Zaller 1992) and the on-line processing model (Lodge, McGraw, and Stroh 1989) provide two similar but theoretically distinct insights into the problem of information. The online processing model is driven more by impressions, which allows for individuals to act as “cognitive misers” so they may keep a running impression about candidates, issues, and parties without the contextual information that accompanies it (1989, 401).

This is in contrast to Zaller’s theory that individuals process information over time where the most recently accepted information is easily sampled from the “top of the head” (1992, 38). Given the flood of information available, understanding how that information is received, processed, and later used is essential to understanding how knowledgeable the public really is. Further research by Lodge and associates finds evidence that the on-line model and impressions are a powerful way of conceptualizing information processing (Lodge, Steenbergen, and Brau 1995). Others look at different factors that influence information processing including: studying genetics as a driver of interest in politics (Alford, Funk, and Hibbing 2005; Fowler, Baker, and Dawes 2008; Hatemi et al. 2009), incorporating cognitive neuroscience to aide in understanding

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21 RAS is an acronym for: Receive the information (those with greater cognitive abilities will be better able to receive more information), Accept the information (where more recently received information will be the most accessible as the “top of the head” part of the model), and Sample from the information to respond to it.
political information processing (Lieberman, Schreiber, and Ochsner 2003), and analyzing how successful some individuals are at using heuristics to aide in accurate recall of previously processed information (Huckfeldt et al. 1999).

The influence of emotion, or affect, is an important piece of the political knowledge puzzle. Emotion is such an integral part of the human experience that attempting to understand what individuals know without understanding the emotion behind their knowledge is negligent. Similar to the evidence in the heuristics literature, individuals with the least information are more likely to be influenced by emotion in their decision making. The relationship between affective decision making and cognitive processes is not mutually exclusive. Rather, they appear to inform one another. There is evidence suggesting that affect may strongly influence vote choice (Abelson et al. 1982), that different emotions like anxiety and enthusiasm lead to different types of behavior (Brader 2005; Marcus and Mackuen 1993), that different behaviors result from related emotions like anxiety and fear (Huddy et al. 2005), and that low- and medium-information voters are more likely to rely on affect than their high-information counterparts (Rahn 2000). Affect includes likes and dislikes of different groups serving as a cue to estimate where those groups fall along the political spectrum (Brady and Sniderman 1985) as well as the conflicting influences of positively and negatively evaluated information, which may lead to lower quality decisions (Redlawsk 2002).

Gibson and Nelson (2016) argue that the symbolic power of the Supreme Court, through robes and procedure, fills gaps in knowledge and plays a role in whether individuals extend legitimacy to the courts. Gibson, Lodge, and Woodson (2014) find that individuals are more willing to accept decisions from the Supreme Court that they
disagree with if the news includes some sort of symbol of the court. They find that symbols activate attitudes toward the court they had in their memory, increasing their reverence for the decision. However, this symbolic emotional power has limits, including evidence that the appearance of judicial symbols of power like a gavel may negatively influence state supreme court legitimacy among African Americans (Gibson and Nelson 2016). While not universal, the power of judicial symbols to activate emotional responses, both good and ill, is not surprising given the reverence with which the judicial system in the United States is broadly, though not exclusively, held. Symbols that activate cognitive or emotional responses are not the only device people may draw upon to overcome deficits of knowledge. There is also evidence that individuals rely on heuristics to guide decision making about a political topic about which they are ignorant.

Heuristics As a Tool to Overcome a Lack of Knowledge

A body of scholarship evolved around the idea that, while lacking the intellectual capacity or interest to process all available political information, individuals may successfully rely on heuristics, or cues, to make decisions similar to those they would make if they were fully informed. Respondents possess some degree of awareness of their ignorance when participating in surveys (Graham 2018), helping to fuel a reliance on heuristics. As a concept, a cue is simply a message that members of the public may use to infer something about a complicated process (Bullock 2011). Essentially, the argument goes that individuals lack the cognitive capacity to process all of the knowledge they need to make informed decisions and that they are not oblivious to this deficit. To overcome their ignorance, they may rely on cues to aide their decision making. For

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22 The judicial system may well be held in disdain among some segments of the population like minorities with negative experiences with police or the courts (Tyler 2000).
example, a voter might rely on the cue of partisanship when deciding whether to cast a vote for a congressional candidate they may not have heard a great deal about. The party cue gives information about how close the candidate’s values may be to the voter in comparison to their opponent.

While some of the scholarship focuses on heuristic usage by elites too busy to process the bulk of information they need (see Tanenhaus 1960), the majority focuses on cue use by members of the mass public (Lupia 1994; Lupia and McCubbins 1998). Lupia and McCubbins argue that individuals may even be capable of making a reasoned choice absent detailed information on issues and candidates (1998). They point out that, if the standard for reasoned engagement by the electorate is a detailed knowledge, then “it must also be true that choices can be made only by ambulatory encyclopedias” (1998, 18). Even as they found evidence that individuals may make reasoned decisions by relying on heuristics to guide them, they place important caveats on the usefulness of cues and the specific conditions under which they are most helpful.

There is also evidence against successfully using cues to replace information. The risks include increasing the avenues in which politicians may use fear cues to manipulate support for policy (Lupia and Menning 2009) and relying on incorrect information when receiving cues from elites who disagree with expert opinion (Darmofal 2005a). Sometimes individuals misuse cues even on retrospective assessments of incumbent performance (Huber, Hill, and Lenz 2012). Additionally, elites, despite their enhanced abilities to process political information are not necessarily good users of cues themselves (Miler 2009). The source of cues influences the meaning that individuals attach to the cue (Kuklinski and Hurley 1994), and heuristics increase probabilities of correct voting by
political experts while *decreasing* the probability of correct voting for individuals who are less knowledgeable (Lau and Redlawsk 2001). Further, Ashworth and Beuno de Mesquita point out that studies that focus only on the behavior of respondents miss the reaction of elites to the public’s use of heuristics (2014). They argue that this creates a circle of reaction between individual knowledge and elite responses that should be taken into account when considering the mechanics of heuristics.

The debate about the usefulness of heuristics as a tool remains unsettled, but the evidence is abundant that individuals *do* rely on cues to make decisions. Scholars explore this reliance on cues as a tool to overcome ignorance in voting extensively. However, scholars have not applied this line of thinking to individual thoughts about the courts. While studies from the last ten years provide evidence that individuals have more knowledge about the Supreme Court than previously thought, the results of surveys that test knowledge of state supreme courts is not nearly so optimistic. Even the presence of multiple-choice options in surveys about state supreme courts, similar to those that improve accurate responses to questions about the Supreme Court, do not reveal any previously unmeasured stores of knowledge.

To briefly restate: there is evidence of broad-based loyalty to the US Supreme Court, as well as state supreme courts. It also appears that a large number of individuals have a general knowledge of the Supreme Court, even as they are largely ignorant of their state supreme courts. Building on the evidence of reliance on cues to inform decision making, I develop a theory of how individuals rely on their knowledge and support for the Supreme Court as a heuristic to guide whether they should confer legitimacy on state supreme courts.
A Cue-Based Theory of State Supreme Court Legitimacy

I begin the development of my theory with a brief return to my primary research question: why do individuals extend legitimacy to judicial institutions they have very little knowledge of? In particular, why do state supreme courts enjoy very high levels of institutional support in environments of low knowledge? Building on previous research, I argue that individuals who lack knowledge of state supreme courts rely, at least partially, on their perception of Supreme Court legitimacy as a cue for conferring legitimacy on state supreme courts they know far less about.

That state supreme courts are not well-known institutions is not surprising, given the complexity of the system. There are 52 state supreme courts in 50 states, some operating under names different than “supreme court,” with a variety of docket sizes, jurisdictions, selection methods, and numbers of judges on the court. This complexity at the state level exists alongside a complex federal judiciary, and the intricate institutional designs of these institutions make it harder for individuals to learn and understand how their courts operate. Given the demands on their cognitive processes in their everyday lives, members of the public know very little about how most judicial institutions operate, even while they appear to know a reasonable amount about the comparatively simple design and higher profile of the Supreme Court. Individuals appear largely ignorant of their state supreme court’s institutional design, selection method, and general output. Not

23 I am aware that there are several institutional names for state high courts in the United States. I refer to all of these as state supreme courts. I do this for two reasons. First, this simplifies terminology while developing my theory. Second, it is the most commonly used term in the news when describing these institutions, and, thus, what I use it in the research design.

24 This is even more surprising in light of studies about the influence of elections on legitimacy. Even in this context, where the courts come much closer than at the federal level to engaging in political activities that threaten to strip them of the difference that is the apparent foundation of their legitimacy, individuals are forgiving of many types of campaign activities.
only do they know little, the resources available to the public to research these courts are not nearly as accessible as information about the Supreme Court. There are many volumes about the Supreme Court in academic libraries, but far fewer texts about state supreme courts. The news also focuses far more heavily on the Supreme Court than state supreme courts. Even websites devoted to tracking state supreme courts are not updated as frequently as is necessary to stay current on what happens on these courts.

However, the evidence also indicates that knowledge of a given court is not strictly necessary for one to extend legitimacy to that institution (Benesh 2006a; Cann and Yates 2008; Gibson 2012). Level of education and support for democratic values are stronger predictors of institutional support than knowledge of the court, which is a weaker predictor. If detailed knowledge is necessary, then most courts would suffer from a severe lack of institutional support, and the evidence indicates this is not the case. Notwithstanding, the extant research to date on state supreme courts is fairly limited in scope. In fact, an intriguing asymmetry exists: the Supreme Court possesses both high levels of knowledge and high institutional support. This is juxtaposed against state supreme courts with low levels of knowledge and high levels of support. Gibson and Caldeira offer convincing evidence that the linking elements are education and support for democratic values. Figure 2.1 illustrates their theorized causal process.

As individual education generally and knowledge of the Supreme Court

25 While not terribly rigorous, a Google News search of the term “state supreme court,” executed with syntax that forces the search engine to include all three terms, results in 26,000 articles. Conversely, a search term of “US Supreme Court,” executed with syntax forcing results that include all three terms, results in 68,000 articles, despite the Supreme Court’s smaller docket.

26 The State Courts Guide has a “Docket Watch” section that was last updated for 2018. See http://www.statecourtsguide.com/docket-watch/.

27 Previous scholarship as well as the continued existence of the courts provides reasonable support of this conclusion.
specifically increases, individuals are more likely to support democratic values and, in turn, increase support for the Supreme Court. Support for and exposure to the Supreme Court reinforces support for democratic values.\(^{28}\) While support for democratic values is also a driver of state supreme court legitimacy, I argue that a previously unexplored link exists where experience with the Supreme Court acts a cue for extending legitimacy to state supreme courts. I illustrate this further in Figure 2.2. Here, both support for abstract democratic values and support for the Supreme Court, built partially through knowledge and exposure to that court as a unique political institution, are causal influences on state supreme court legitimacy.

At the Supreme Court level, it appears that a commitment to democratic values and a “fairly sophisticated understanding of democratic theory” drives legitimacy (Gibson 2007b, 532). I argue that the same theory cannot be easily applied to the state supreme court level, primarily due to two potential flaws.\(^{29}\) First, the theory does not take into account the evidence that knowledge of the Supreme Court may operate as a reinforcing mechanism for support for democratic values. In school and in popular media, individuals are exposed to the Supreme Court acting in ways that support the rule of law and democratic values.\(^{30}\) Thus, support for democratic values does not exist in an intellectual vacuum. Rather, it is reinforced by the existence of and actions by the Supreme Court, as theorized by Easton (1965, 1975). Individuals, because they know

\(^{28}\) When I refer to democratic values, I am referring broadly to aspects like preferences for rule of law, judicial independence, separation of powers, political tolerance, and a balance between liberty and order (See Gibson and Caldeira 2009c). Gibson explains the causal process from education to support for courts, leading individuals to the conclusion that “courts are different” (2007a, 532).

\(^{29}\) Not including the inherent flaw of trying to apply federal level theories to state institutions that are not identical.

\(^{30}\) This is of course not to say that students are not taught about state supreme courts in school. They just tend to receive far less attention than the Supreme Court.
more about the Supreme Court, are better able to understand the abstract concepts of
democratic values when they link those values with an institution that upholds them
while avoiding the messy parts of politics the public dislikes.

Second, the federal-level theory assumes a level of intellectual sophistication in
the political thinking of Americans that may not be present when the context is changed
to an institution that individuals know and care less about. At the state supreme court
level, the public receives less exposure to those courts acting in ways that reinforce
democratic values. Since individuals can turn to what they know about the Supreme
Court and feel reasonably comfortable they know enough to make an informed opinion of
that institution, they can use that to make judgments on similar institutions. In this way,
the Supreme Court becomes a cue for individuals to reference when thinking about
judicial institutions they know far less about.

Recall that individuals are inclined to confer legitimacy on courts because they
perceive them to be different from their political counterparts in the legislative and
executive branches. Supporting democratic values is an important component in this
scenario because it provides an understandable context for thinking about the judiciary as
an institution uniquely different from the other branches of government. However,
individuals are aware enough to realize they do not know a great deal about state supreme
courts. Therefore, broadly accepted but abstract democratic values may not be enough in
this context. Given this theoretical tension, I offer my primary theoretical contribution:

When thinking about state supreme courts, some members of the public turn to
their support for democratic values broadly and their support and understanding of the
Supreme Court specifically when making determinations about conferring legitimacy on
state supreme courts. Put another way, the Supreme Court acts as a cue for individuals when deciding whether to confer legitimacy upon state supreme courts.

Building on the works of Caldeira and Gibson (1992); Gibson, Caldeira, and Baird (1998); and Gibson and Caldeira (2009a), I theorize that the causal process for conferring legitimacy among members of the public with low levels of knowledge of state supreme courts goes something like this:

1. Thinking about the state supreme court is activated by some event that garners their attention. This event may be a court decision, a campaign, or a nomination process.
2. Once their thinking about the court is activated, they become cognizant of the fact that they have little institutional knowledge of the state supreme court to make an informed decision about the attention-grabbing events.
3. These individuals, in turn, lean on what they do know, which for many is support for democratic values.
4. Those values in the context of the judiciary are frequently reinforced by perceptions of the Supreme Court.
5. Individual’s support for state supreme courts is thus partially a consequence of their support, or lack of support, for the Supreme Court.

However, this process is likely only so when members of the public lack information about state supreme courts. What level of information may be adequate for individuals to make decisions about the legitimacy of state supreme courts? I do not offer

31 While studies show that court knowledge is not a particularly powerful influence on judicial legitimacy, it is typically statistically significant in studies, providing evidence that it plays a role, if small, in conferring legitimacy.
a specific level but rather theorize that enough information may come from some activity by a state supreme court that garners a great deal of attention.\textsuperscript{32} Even this attention and subsequent knowledge gained is likely ephemeral over the long term. Any member of the public’s opinion of the state supreme court, built from knowledge of a specific action or series of actions, would weaken over time in the absence of new information, to be replaced once again with the Supreme Court acting as a cue for lower court legitimacy. I reduce this into my first hypothesis:

**Supreme Court Cue Hypothesis:** *Among members of the public with low knowledge of state supreme courts, support for the Supreme Court acts as a cue informing whether those people should extend legitimacy to the state supreme court.*

It may be useful to think of this hypothesis through an analogous example. Gibson and Caldeira refer to loyalty to the Supreme Court as something akin to the loyalty one extends to a friend (1998). A person may be disappointed in an action of that friend, but individual actions are usually not enough to destroy the loyalty of the friendship. This is especially true if that loyalty is the result of many actions that person supports. I take this analogy one step further at the state supreme court level. Here, this is more like extending loyalty to the familial relative of a friend. While a person may not know the relative very well, they have a great deal of loyalty toward the friend. From their limited perspective, they perceive the relative to be similar to the friend in many ways, and are thus willing to give the relative the benefit of the doubt, given the trust they hold in their friend. Thus, if a member of the public extends legitimacy to the Supreme Court, they are likely to do the

\textsuperscript{32} The inciting activity at the state supreme court level could be a particularly compelling or impactful case, a calm or vicious election campaign, or scandal.
same for the state supreme court absent knowledge or opinions about the state court.

I argue that actions by the Supreme Court that meet the expectations of the public are likely to have a positive influence on state supreme courts while behavior that does not meet the expectations will have a negative influence. Since both the Supreme Court and state supreme courts have high levels of legitimacy, behavior that meets the expectations of the public is unlikely to have any measurable influence on diffuse support because the institutions are already at a high starting point. Given that there is not a lot of room for improvement, behavior that does not meet expectations is more likely to cause a negative, measurable change in levels of support because it means a change from high levels of legitimacy built upon a history of met expectations. Thus, if the Supreme Court acts as a cue for extending support to state supreme courts, then behavior that does not meet the public’s expectations by the Supreme Court is where evidence of this is most likely to appear.

It is important to return briefly to the difference between politicized and political courts. The evidence to date indicates that courts that appear politicized are most likely to suffer in their perceptions of legitimacy. However, the evidence indicates this relationship is not completely straightforward. Baird and Gangl (2006) find that college students react positively to decisions that appear motivated by legal reasoning versus those that appear more politically motivated. Perceptions of the process by which the decision is made are also important. Simon and Scurich (2011) find that opposition to a decision enhances the likelihood that the public will penalize the court if the process appears to be politicized. Christenson and Glick (2015) use an experiment that randomly assigns information to respondents about Chief Justice John Roberts’ decision to switch
his vote on the Affordable Care Act in 2012, casting his decision as politically motivated. Those who receive the treatment report lower levels of diffuse support than those who do not. Strategic behavior in decision making on the court is not the only perception that can hurt legitimacy. So too can evidence of a politicized confirmation process to the U.S. Supreme Court (Gibson and Caldeira 2009) or campaign activity that appears overly politicized (Gibson 2012). With this evidence, it is more likely that information indicating a politicized court will negatively and strongly influence state supreme court legitimacy. Information about specific support, either positive or negative, or diffuse support if it is positive, is unlikely to influence a decision to confer legitimacy to state supreme courts.

Additionally, recall how support for democratic values and support for the Supreme Court form an endogenous loop, making it difficult to distinguish between them. I offer that focusing on behavior by the Supreme Court that is perceived negatively by the public is the best place to tease this out theoretically. If support for democratic values and institutions are the strongest drivers of state supreme court legitimacy, then actions by the Supreme Court and the perceptions they cause should have little to no influence on state supreme courts. If state supreme courts are independent institutions for the purposes of conferring legitimacy, then that independence should be most visible when the legitimacy of the Supreme Court is harmed. If they are not harmed and my argument that the Supreme Court acts as a cue for state supreme court legitimacy is correct, then support for the state supreme court should be negatively influenced by actions of the Supreme Court. Thus, I offer:
**Negative Supreme Court Cue Hypothesis:** *If the legitimacy of the Supreme Court is harmed or called into question, this will have a negative influence on state supreme court legitimacy.*

Note that this hypothesis is specifically dealing with diffuse support, rather than specific. Given the evidence that specific actions by the Supreme Court do not have an enduring negative influence on the legitimacy of that body, I offer that specific actions do not negatively influence diffuse support for any given state supreme court either. Put another way, only if the diffuse support of the Supreme Court is weakened will state supreme court diffuse support be harmed.

While much of the recent literature focuses on states with elections, there is some evidence that selection method may play a role in judicial legitimacy. Recall that Benesh (2006a) and Cann and Yates (2008) finds that respondents in states with judicial elections have lower confidence in their courts than their counterparts in states without elections. However, Benesh’s dependent variable is confidence in the court rather than judicial legitimacy. Cann and Yates use a better measure of diffuse support, and while diffuse support among the public in states with partisan elections is lower among respondents with low knowledge than those in other states, it is not dramatically different. This information is juxtaposed against evidence that judicial elections are not as harmful as theorized, and may even enhance legitimacy (Bonneau and Hall 2009; Gibson 2012). Still, selection method may lead to some variation in results. The evidence in all of these studies is that people in states that elect judges have more knowledge of state supreme courts than their counterparts in states that do not elect judges. This adds an additional level of theoretical variation to address.
**Elected Judge Hypothesis:** People in states that elect judges are more likely to have knowledge of their state supreme court and thus less likely to rely on the Supreme Court as a cue for conferring legitimacy on state supreme courts than members of the public in states that do not elect judges.

To summarize, I argue that the majority of the public lacks knowledge of their state supreme court. However, many know a reasonable amount about the Supreme Court, and most people generally support democratic values, broadly defined. When deciding whether to confer legitimacy to a state supreme court they know little about, I argue they rely both on their support for democratic values as well as their support for the Supreme Court, which acts as a cue indicating whether they should extend legitimacy to their state supreme court. In particular, this should be most apparent when the Supreme Court engages in behavior that does not meet the expectations of the public, thus harming the Supreme Court as well as the state supreme court. Additionally, I argue that states with judges who are elected are likely to have a public with more knowledge of state supreme courts, reducing their reliance on the Supreme Court heuristic when deciding to confer legitimacy at the state level. In chapter three, I test the theory that the public broadly lacks knowledge of state supreme courts. Additionally, I examine the degree to which the sample I rely on for this study is representative, for the purposes of this project.
Figure 2.1: An Illustration of Support for the United States Supreme Court

Figure 2.2: An Illustration of Support for State Supreme Courts
CHAPTER 3
PUBLIC KNOWLEDGE OF STATE SUPREME COURTS

Measuring citizen knowledge of political institutions and phenomena is a challenging task. The public may appear as hopelessly ignorant or surprisingly well-informed, depending on the method of assessment (Gibson and Caldeira 2009). That being said, the research does generally indicate that knowledge of the Supreme Court is more extensive than knowledge of state supreme courts (Gibson 2012). One of the questions that this project seeks to answer is: What do citizens know about state supreme courts? In this chapter, I rely on evidence from my survey to first look at how representative the survey sample is. Next, I examine in detail the results of my survey experiment to answer what kind of knowledge citizens possess about their state supreme courts as well as how they feel about those state institutions. Finally, I review the results of survey questions that measure judicial legitimacy as well as support for democratic values to understand the degree to which state supreme courts are perceived as legitimate among the public.

**Measuring Knowledge of the Courts**

Measuring what citizens know is a challenging exercise, specifically due to disagreement over survey design. Debates over the best ways to approach this task revolve around the types of questions to ask. The scholarly evidence indicates a general lack of knowledge about American government among respondents. However, surveys
showing the lowest level of knowledge tend to rely on open-ended questions. Multiple choice questions are more likely to yield results that indicate citizen knowledge is not as low as some scholars suggest. Open-ended and multiple-choice questions are the two primary methods of measuring knowledge, and I next review these as a foundation for the types of questions I rely on in my survey.

Types of Questions

The usage of open-ended questions is common practice for ascertaining citizen knowledge in many scholarly studies. This practice involves asking a respondent a factual question about the government and recording their response. While common, this approach introduces two particular problems. First, asking respondents to recall political knowledge off the top of their head is not an accurate method to test what they know (Krosnick et al. 2008). Political discussions do not generally occur with the reliance only on what an individual citizen knows in an impromptu environment. Citizens may rely on each other, news sources, or information from the internet to shape their opinions. The open-ended question results paint a picture of ignorance that is widespread and divergent from what political theorists contend is necessary for successful democracy. On the other hand, the multiple-choice question results provide evidence of a citizenry that is more knowledgeable than previously given credit for.

Second, coding the responses to open-ended questions introduces the possibility of measurement error. Kronick et al. (2008) report that, in the American National Election Study (ANES) survey, many responses to the open-ended questions were technically correct but recorded as incorrect because they did not precisely match the
correct answer coders were given. To avoid this, I ask respondents a series of multiple choice questions about court knowledge. Using these types of questions provides a more accurate picture of court knowledge and makes the survey a tougher test of my theory. I contend that those with lower levels of knowledge are more likely to rely on the Supreme Court as a cue to inform what they know about state supreme courts. By more accurately narrowing down respondents to those who know so little about their state supreme courts based on their multiple-choice answers, I provide the most direct test possible.

Feasibility is another consideration with surveys of this type. Scholars report that the greater the pay on survey sites like Mechanical Turk, the better the quality of responses researchers will receive (Berinsky, Huber, and Lenz 2012). The more time the survey takes to complete, the more each respondent may expect in payment. In addition to the fact that open-ended questions are time-consuming to answer for respondents, they have also been proven to be an unfair test of knowledge and difficult for researchers to code. Thus, I rely on multiple-choice questions because they are more accurate assessments of knowledge, they are more straight-forward to code, and they keep the survey reasonably affordable without greatly sacrificing quality in the type of respondent who participates.

**A New Survey of State Supreme Court Knowledge**

We know quite a bit about the amount of knowledge the general population possess about the Supreme Court. When it comes to state supreme courts and knowledge of those institutions among citizens, though, I start with very little previous scholarship to build upon. Gibson (2012) examines state supreme courts and asks what citizens know

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33 Questions about the chief justice are noteworthy. Many answers were coded as incorrect, even while the respondent clearly knew which person the survey was referring to.
about those courts relying on multiple-choice questions. Even among citizens attentive to
dependent to political events, the results are abysmal. The question with the highest number of correct
responses, 45.6% of respondents in the Gibson survey correctly answer that the Kentucky
State Supreme Court has the “last say” on the meaning of the state constitution (2012).
Only 32.9% of respondents knew the term that Kentucky justices serve, and 24.0% knew
whether their state court justices were elected. We may contrast this with Supreme Court
questions by Gibson and Caldeira (2009), where 56.8% of respondents knew the federal
Supreme Court was the final word on the constitution and 73.9% of respondents correctly
answered that the justices are appointed by the president. Before I analyze respondent
knowledge about state supreme courts in my study, I first turn to the demographic results
of the survey and how representative they are of the general U.S. population. Through
this analysis, I offer evidence that the survey is somewhat representative of the country,
with some bias in the direction of Democrats, liberals, younger respondents, and those
with greater education.

Demographic Results

I begin with gender in Table 3.1. While not perfectly representative of the country
as a whole, nor of the individual states, it is very similar to the demographic contours of
the country in general shape if not in specific boundaries. The gender breakdown of the
sample skews male more than the overall population.\footnote{To make it easier to compare the survey data to the 2010 United States census data, I have included direct comparisons in the tables where this comparison is possible based on the ways in which the data is divided in the sample. In this chapter, the direct comparisons are possible for the gender and race categories. The other sample demographic tables do not have this direct comparison because the 2010 census data and Gallup results are not comparable across the same categories.} According to 2010 census data, the male-to-female ratio is 49.2 to 50.8 (Howden and Meyer 2011). In my sample, the
male-to-female ratio is 53.64 to 46.36. This difference is relatively small and still close to the national results. A question I will return to for each of these demographic variables is the extent to which I expect any difference to influence what citizens know about state supreme courts. In previous studies of judicial legitimacy, gender rarely plays a statistically significant role in extending institutional support to any given institution, particularly at the state supreme court level (Cann and Yates 2008; Gibson 2012).\(^{35}\)

Examining the results by race reveals a sample that skews white in Table 3.2. While 77.9% of the sample is white, the 2010 census reveals a white population of 72.4% (Humes, Jones, and Ramirez 2011). This is because African Americans and Hispanics are underrepresented in my study. African Americans and Hispanics make up 7.4% and 6.8%, respectively, of the sample. This is five percentage points fewer for African Americans and ten percentage points fewer for Hispanics than the 2010 census. Asians are slightly overrepresented in the sample at 5.5% compared to the 2010 census report of 4.8%. Native Americans closely match the ratio found in the population, but the total number of respondents who report that race is seven. In the survey I conduct, I include a category labeled “A Different Race.” The census does not use this language, instead referring to “Two or More Races.” It is not a direct comparison, and there is no way to tell directly based on the data, but these two categories are similar, with the sample reporting 1.3% claim A Different Race versus 2.9% who claim Two or More Races in the census. On the whole, this is not a perfect match for the racial breakdown, but I argue that the difference is not large enough to disrupt the reliability of the sample. First, the difference is generally small. Second, ignorance of state supreme courts likely crosses

\(^{35}\) In some cases, gender is statistically significant, but the magnitude of influence is weak.
racial lines because of the conditions that make state supreme courts hard to follow, understand, and develop an opinion about. Further, while race may play a role in support for the Supreme Court, it typically does not appear as a statistically significant factor in state high court legitimacy scholarship (Gibson 2012; Gibson and Caldeira 1992).

The sample skews younger than the population at large by a fairly considerable degree in Table 3.3. The census bureau data indicate that, in 2010, 16.2% of the population is over the age of 62 (Howden and Meyer 2011), where only 5.1% of the sample is 60 and up. Citizens between the ages of 45 and 64 are 26.4% of the population in the census, similar to the 26.3% of the respondents that are ages 40 to 59 in my sample. However, those 18 to 29 make up a disproportionate share of the sample, coming in at 33.7% versus a mere 9.9% of those 18 to 24 in the 2010 census. While this is not a representative sample regarding age, the result is similar to what other scholars find using Mechanical Turk (Berinsky, Huber, and Lenz 2012). I offer that, while there may be some variation of state supreme court knowledge by age, it is likely small, for the same reasons I discuss above about the conditions that make state supreme court knowledge difficult to gather. Thus, while age is not perfectly representative, it is unlikely to strongly bias the results of my analysis.

The results of the sample by political party indicate the sample is skewed toward Democrats in Table 3.4. This is not surprising given previous research on Amazon Mechanical Turk samples, which indicates that the samples tend to be Democratic and liberal (Berinsky, Huber, and Lenz 2012). The sample I draw indicates similar biases. However, it is difficult to get a reliable measure of partisanship in the country. First, many states do not require citizens to register with a political party when they vote, and,
even when they do, the results are not always trustworthy.\textsuperscript{36} Second, surveys introduce the potential for sample bias, although many companies strive to draw representative samples and reduce bias as much as possible. I compare the results of the survey against those of the Gallup organization, a pollster with a relatively solid reputation for representative samples. I do not suggest that the Gallup poll is as accurate as the census, but it is likely a more reliable look at national partisan preferences than the survey I provide via the Mechanical Turk pool of participants.\textsuperscript{37}

According to a Gallup poll taken during the same period the survey is in the field, the partisan affiliation of the country breaks down as follows: 25\% claim to be Democrat, 44\% claim to be Independent, and 28\% claim to be Republican. Given trends going back several years, this is something of a high mark for Independents, who range from 27\% as a low to 47\% as a high in data going back to January of 2004.\textsuperscript{38} The Democratic number also is a little low by historic standards, with those reporting as Democrats ranging from a low of 26\% to a high of 40\%. Republicans in this series range from a low of 20\% to a high of 39\%. Given the wide fluctuation over time, it is difficult to compare, but it is not too big a leap to say that Democrats are likely overrepresented in my survey while Republicans are likely underrepresented. By historic standards, the numbers my survey returns are not outside the extremes, although they do reflect an American polity that resembles that found during the waning days of the Bush era rather than what one might

\textsuperscript{36} Take North Carolina, for example. On December 2, 2017, Democrats outnumber Republicans among registered voters by 600,000. However, Republicans dominated the state legislature in December of 2017. Further, Republicans have a slight edge at statewide races, although these races have become more competitive. See the report here: https://vt.ncsbe.gov/RegStat/Results/?date=12%2F02%2F2017.
\textsuperscript{37} Relying on the census is not foolproof, of course. There are problems getting answers from every single person in the country, and the data are collected six years before the present survey.
\textsuperscript{38} See the full report here: http://www.gallup.com/poll/15370/party-affiliation.aspx.
expect during the victorious interlude for Republicans between the 2016 election and the start of the Trump administration. However, there is no theoretical reason to believe that knowledge of state supreme courts is reliably different across party affiliation, especially since affiliation is so fluid over time.

Concerning ideology, the sample I provide is decidedly more liberal than the country appears to be in Table 3.5. Unlike partisanship, Gallup reports that ideology is comparatively stable, if trending slowly toward a larger liberal proportion versus smaller conservative and moderate proportions. According to a January 2017 Gallup survey, 36% of Americans claim to be conservative, 34% claim to be moderate, and 25% claim to be liberal.39 This is markedly different from the Mechanical Turk survey, where only 25.1% of respondents are conservative, 21.1% are moderate, and 53.8% are liberal, including 22.6% who say they are very liberal. While the partisanship of the Mechanical Turk sample is not so far off the Gallup survey, the ideology makeup of the sample group is substantially different. For the purposes of this study, the question becomes: Does this large difference matter? I argue that it does not matter in a materially important way, primarily because ideology alone does not provide a great deal of insight about knowledge of government.

I turn next to Table 3.6 and the final demographic variable: education. This is the only variable that I argue is likely influential in knowledge of state courts, and the one that should be as close to national levels as possible. The sample I draw reports higher education than the general population. According to the 2010 Census Bureau, 12% of the U.S. population has less than a high school diploma in 2011 (Bauman 2012). Only 0.7%

of respondents in the sample have less than a high school diploma. 31% of the population possesses a high school diploma as their highest educational attainment, while only 11.3% of survey respondents report the same. 26% of the population has some college or an Associate’s degree, while my survey includes 36.9% with the same level of education. 19% of the population possesses a Bachelor’s degree, while 39.1% of survey respondents report having this degree. At the higher end of educational attainment, the national numbers and my own are similar. 8% of the population has a Master’s degree in comparison to 8.5% of the survey, 1% of the population has professional degrees in comparison to 2.1% in the survey, and 2% of the population has doctoral degrees in comparison to 1.5% in the survey. The bulk of the difference here is in the number of people with college degrees or some experience in college. This is the demographic characteristic most likely to influence the results of my experience. The greater educational attainment a survey respondent has, the more likely it is that they have some familiarity with state supreme courts, but I argue in the theory chapter that ignorance of state supreme courts is relatively widespread. Relying on a survey of people with greater education helps to illuminate the connection between education and knowledge of lesser known courts.

On the whole, my sample reports greater educational attainment, is more liberal, and is younger than the general population. Additionally, given the available evidence, it appears it is also more Democratic than the population. However, I offer that these differences are immaterial given the widespread ignorance of state supreme courts that I argue crosses most demographic lines. I next turn to the thermometer questions before examining what it is that respondents think they know about state supreme courts as well
as the questions they actually answer correctly.

*Thermometer Questions*

As another means of assessing the preferences of my sample, my survey includes thermometer questions that gauge cool or warm feelings on a scale of 0 to 100. I ask respondents to report their warmth toward President Obama, President-elect Trump, the United States Congress, local police, and corporations. The results are in Table 3.7. President Obama is seen more warmly than President-elect Trump in the sample. President Obama’s mean thermometer rating is 59.47, while President-elect Trump’s is 26.96. However, there is wide variation around that measurement with all results reporting large standard deviations. Given the liberal bent of the sample, it is not surprising that warmth for President Obama is higher than that of President-elect Trump. What is striking is the mean warmth rating for Congress, which, at 34.71, is higher than President-elect Trump’s mean score. During the transition between administrations, it appears that respondents in this sample are not giving the President-elect any benefit of the doubt. Local police receive the highest mean warmth score at 60.81, but corporations do worse with a mean warmth score of 42.81.

Taken together, these mean thermometer scores provide a portrait of a sample that is similar to approval or favorability ratings in other surveys. Many national surveys ask for approval or disapproval of the institutions I have chosen, but comparing mean feeling thermometer results to approval scores is not an exact one-to-one exercise. Even so, the results of my sample are generally similar to other surveys’ overall findings. Congress remains quite unpopular, with approval ratings routinely in the twenties and teens.⁴⁰

Approval of police is in the mid-fifties according to an October 2016 Gallup poll, an increase from a low in the previous year in connection with the racially-charged events in Ferguson, Missouri (McCarthy 2016). Corporations appear unpopular in my sample, similar to ranking of big business by Gallup, in which only 21% of respondents say they have a great deal or quite a lot of confidence in them.\footnote{See here for the full record: \url{http://news.gallup.com/poll/5248/big-business.aspx}.} The survey is in the field during the presidential transition, when President Obama received high job approval ratings in the fifties and sixties.\footnote{See here for Obama approval: \url{https://www.realclearpolitics.com/epolls/other/president_obama_job_approval-1044.html}.} President-elect Trump’s popularity increased during the transition as well, although the liberal lean of the sample reveals itself most strongly via the thermometer question about him.\footnote{See here for Trump approval: \url{https://www.realclearpolitics.com/epolls/other/president_trump_job_approval-6179.html}.}

The feeling thermometer questions reveal a sample that is similar to the general public in many ways, given the evidence available from public polling. However, there is an undeniable liberal lean in the sample that reveals itself in thermometer questions about President Obama and President-elect Trump. I next turn to levels of knowledge about state supreme courts. Thus far, I theorize that lack of knowledge about state supreme courts is extensive, and that it crosses most demographic lines. I examine the evidence in support of this claim.

\textit{State Supreme Court Knowledge}

I begin the analysis of citizen knowledge by reviewing how respondents rank themselves. I ask them to answer how much they think they know about the United States Supreme Court and their state supreme courts on a scale of 1 to 10, where 1 is nothing...
and 10 is a great deal. The results of these questions mirror both assessments of knowledge in other surveys and indicate that there is awareness among the population about their ignorance of these institutions, particularly at the state level. The results are in Table 3.8. The mean score among respondents who answer how much they know about the Supreme Court is 5.09. This is supportive of other surveys that show that citizens are not completely ignorant of the Supreme Court, even if they do not recall much about it off the top of their heads with great detail. 55% of respondents rate themselves at a 5 or below, indicating that 45% of the sample think they know a reasonable amount about the Supreme Court. Nearly one-third of the sample rate themselves a 4, 5, or 6. Only 1.2% rate themselves a 10, while 1.9% rate themselves a 1. Perhaps these relatively high numbers reflect the skew of the sample toward greater educational achievement. However, this depiction of relatively high citizen knowledge evaporates when it comes to the state supreme courts. The mean score of self-knowledge assessment is 3.25, significantly smaller than for the Supreme Court. 86.8% of the sample rank themselves at a 5 or below, with a full 17.8% ranking their knowledge of state supreme courts as a 1, meaning no knowledge. A mere 0.5% rank their knowledge of state supreme courts as a 10.

The survey also includes factual questions about the United States Supreme Court as well as the state supreme court for the state in which survey respondents live. Generally speaking, as my theory predicts, citizens know a reasonable amount about the United States Supreme Court. The results are in Table 3.9. 77.4% of respondents correctly answer that the Chief Justice is John Roberts. 88.0% answer correctly that

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44 I follow the lead of Gibson and others, borrowing some of the knowledge questions from the survey Gibson (2012) relies on for his work on Kentucky’s state supreme court elections.
Supreme Court is the final word on federal constitutional matters. 77.6% of respondents correctly answer that justices are appointed for a life term. However, only 41.0% of respondents knew that President Obama appointed two of the three women on the Supreme Court at the time of the survey. Overall though, the results are in keeping with other surveys that show knowledge of the Supreme Court to be quite high, particularly when the assessment tool includes multiple choice questions.

Respondent knowledge about state supreme courts was quite different. A mere 16.8% of respondents are able to correctly identify the state court selection method for their state high court. 24.8%—the highest percentage of respondents who answer a question about state supreme courts correctly—know their state high court’s term of office. Only 12.3% of respondents correctly answer the question about state courts having the final word on issues regarding the constitution of their state. This question may be a bit tricky for respondents to answer, because the United States Supreme Court may make decisions about state constitutions if those cases include a federal question. If the issues are state questions exclusively, then the state court is the final word.

Lack of knowledge of state supreme courts cuts across demographic lines. With few exceptions, the level of knowledge of state supreme courts is low for all categories and subcategories of people in the sample. Tables 3.10 through 3.15 include the percentage of respondents who answer the state supreme court knowledge questions correctly or incorrectly, divided into the different demographic categories I survey. Levels of knowledge of state supreme courts do not vary much from one subcategory to another. The exceptions are: respondents with very high levels of education on the question regarding term length and very conservative respondents on selection method.
questions. These findings indicate that state supreme court knowledge is not only low among respondents, but it also generally does not vary a great deal across demographic variables. With this evidence that state supreme court knowledge ignorance among respondents is fairly widespread, I next turn to measures of legitimacy and confidence in courts.

**Legitimacy of High Courts in the United States**

In the theory chapter, I explain that asking about confidence in courts is not a valid measure of legitimacy, because it better captures the concept of specific support. However, I ask respondents this because my legitimacy measure only assesses institutional support for state supreme courts. I do not measure Supreme Court legitimacy, though I am interested in some measure of support for the Supreme Court, even if it is closer to the theoretical concept of specific support. I ask respondents whether they have more confidence in the Supreme Court, in their state supreme court, in both courts, or in neither. The results are in Table 3.16. 47.3% of respondents reply that they have more confidence in the Supreme Court, while only 13.5% have more confidence in their state supreme court. 9.7% respond that they have confidence in both courts, while nearly one-third, 29.6%, say they do not have confidence in either court. This may reflect the fact that respondents know so much less about state supreme courts than the Supreme Court.\(^{45}\) I turn next to see the measure of support for the state supreme courts.

\(^{45}\) This is another piece of evidence in support of using an index to test legitimacy. Gibson (2012) finds very similar levels of institutional support for the Supreme Court and the state supreme court of Kentucky. However, when relying on confidence, a different matter is being asked in the minds of respondents.
Measuring State Supreme Court Legitimacy

Following the lead of Gibson (2012), I ask respondents a series of 9 questions about their state supreme courts. I code their responses as either supportive or not supportive of the court and then add the number of supportive responses they provide. The results of the index I create using that information is in Table 3.17. At first glance, the numbers may appear to indicate that state supreme courts are in a bit of trouble concerning legitimacy with respondents. A little over half of respondents answer in support of state supreme courts in four or fewer questions. The results of the index appear to indicate that state supreme court legitimacy is not particularly robust. This initial analysis is not that surprising, given the lack of knowledge about state supreme courts.

However, closer inspection of the individual measures that make up the index indicates generally widespread support in Table 3.18. I ask respondents to reply to the following statement: “If the supreme court of my state started making a lot of decisions that most people disagree with, it might be better to do away with the supreme court of my state altogether.” Previous scholars rely on this statement as a benchmark of sorts to measure legitimacy aside from the index, which captures other dimensions of the concept (Gibson 2012). In the survey, 58.4% of respondents disagree with doing away with their state high courts, including 17.7% who strongly disagree. Conversely, only 5.2% strongly agree. These results are quite compelling, particularly against the backdrop of widespread ignorance for these institutions.

Other individual statements also indicate that state supreme courts possess a solid reservoir of support. I ask respondents whether “the supreme court of my state should be listened to, even if I disagree with the ruling.” Fully 69.5% of respondents agree,
including 15.3% who strongly agree. 54.5% of respondents trust their state supreme court to make decisions that are in the best interest of the state versus only 20.5% who disagree. Only 25.0% think that the courts’ authority to rule on controversial areas should be removed versus 47.1% who do not. While these statements revealed generally strong support for the state supreme courts, the results of other statements are less positive.

In particular, statements that assess support for judicial independence as well as the degree to which courts are seen as unique institutions in comparison to their more political counterparts reveal a murkier picture. One statement asks respondents to agree or disagree with whether a judge should be removed if they “routinely make decisions at odds with the majority of the people of my state.” 33.14% of respondents agree versus 38.9% of respondents who disagree. 27.6% are uncertain. The next judicial independence statement asks respondents to agree or disagree with whether their state “supreme court…ought to be made less independent so that it listens a lot more to what the people want.” 40.4% of respondents agree versus 38.9% who disagree. 21.3% are uncertain. This shows a lack of consensus about judicial independence, but it is also uncovers a competition between American values. On the one hand, there is the importance of a fair and independent judiciary, but in these statements, citizens are asked only about going against the wishes of the people. Perhaps a more accurate statement might talk about specific court-curbing measures the executive or legislative branches might take. However, the hesitance of respondents to go overwhelming against the courts even when the statement positions the judiciary against the will of the people demonstrates a net positive for state supreme court legitimacy.

The statements that ask about the uniqueness of courts test the degree to which
citizens see the courts as special institutions that are different from their more politicized counterparts in the executive and legislative branches. The first statement asks respondents to agree or disagree with whether “there should be stronger controls in place to prevent the supreme court of my state from becoming involved in politics.” 51.4% of respondents agree with that statement, including 18.0% who strongly agree. 21.0% disagree, while 27.6% are uncertain. On the surface, this result may appear to suggest a lack of diffuse support for the state courts. Given the lack of knowledge respondents possess about their state supreme courts, though, this result may also be a reflection of the fact that citizens understand courts need to be separate from politics. I am going to extrapolate a bit beyond what the data alone say and offer that, because citizens understand that courts ought to be different from other government institutions, respondents might be more likely to want institutional checks to make sure it is so. This is not necessarily because respondents distrust the courts, but rather because they distrust human nature and the ability of people with access to power and money to remain unpolticized. The next statement prompts the follow-up to the first uniqueness statement: “The supreme court of my state gets too mixed up in politics.” Only 34.2% agree versus 31.4% who disagree. When I ask respondents directly about whether their court gets too involved in politics, the number shifts a good deal from when they are asked about whether stronger controls should be put in place to separate the branches. This appears to indicate that a reasonable portion of the population thinks their state supreme courts are not politicized, even as more than half recognize the importance of that uniqueness.

One final statement that assesses support for the court refers to the final word on the constitution. The statement reads: “The Supreme Court of my state may have ideas
about what the constitution means, but it is more important what the majority of the people think the constitution means.” On this statement only 26% agree versus 46.1% who disagree. This is an important acceptance and understanding of judicial authority. Specifically, the fact that the courts have to make decisions based on complicated legal documents, not what the people think they should mean.

Taken individually, the statements provide a perspective on judicial legitimacy that is generally positive and indicative of widespread state supreme court support. Aside from the support for the courts, I am interested in a causal factor that other scholars report is a significant influence on court legitimacy: support for democratic values. I measure support for democratic values similar to the way in which I measure support for the courts. I ask respondents to agree or disagree with statements about several abstract democratic values. I then compile the results onto a single variable to measure the degree to which support for democratic values influences support for state supreme courts. First, I turn to each statement and the results from the survey before discussing the summative measure of support for democratic values.

Support for Democratic Values

Respondents are asked to answer whether they strongly agree, agree, are uncertain, disagree, or strongly disagree with the following statements:46

1. A society shouldn’t have to put up with those who have political ideas that are extremely different from the majority.

46 These questions are from the first round of Gibson’s (2006) survey. The first 6 questions are included in Gibson’s 2012 book, and the last two are omitted from that analysis. Instead, the author relies on three other questions that gauge support for due process. Given the timing of my survey, in the winter of 2016 to 2017, and the salience of rights of the minority issues to many people in the United States at the time, I ask about support for minority rights instead of those inquiring about due process.
2. It is not necessary to obey a law you consider unjust.

3. It is better to live in an orderly society rather than to allow people so much freedom that they become disruptive.

4. Sometimes it might be better to ignore the law and solve problems immediately than wait for a legal solution.

5. Free speech is just not worth it if it means that we have to put up with the danger to society of extremist political views.

6. The government should have some ability to bend the law in order to solve pressing social and political problems.

7. In politics, the majority ought to get what it wants, even if it means that the rights of some minorities are restricted.

8. Majority rule may be an important principle for democracies, but the majority must always respect the rights of all minorities.

Statements 1, 3, and 5 are measures of support for the democratic value of liberty over order. Statements 2, 4, and 6 are measures of support for the rule of law. Statements 7 and 8 are measures of support for rights of the minority in a majoritarian government structure. The results for statements 1, 3, and 5 indicate strong support for the democratic value of liberty over order in Table 3.19. Only 14.3% agree with statement 1, 30.3% agree with statement 3, and a mere 10.7% agree with statement 5. Nearly half of respondents disagree with statement 3, while around three-fourths of respondents agree with statements 1 and 5. On the whole, support for these abstract values is quite high, even when the alternative means exposure to extreme political views and the potential for disruptive political behavior. The percentage of respondents who report being uncertain
never goes beyond 20%, and disagreement approaches 50% or more in each statement. It appears that, among this sample, support for liberty over order is quite robust.

Statements 2, 4, and 6 indicate strong support for the democratic value of rule of law. Only 18.3% agree with statement 2, which asks about obeying laws the respondent personally considers unjust. 24.2% agree with statement 4, which asks about ignoring the law to solve problems more quickly. Similarly, just 21.6% respond in agreement with statement 6, which asks about the ability of the government to bend the law to solve a problem. At no point does support for these violations to the concept of rule of law pass beyond 25%. Further, the percentage of respondents who report they are uncertain never passes beyond 26%. More than 50% of respondents disagree with each statement regarding the rule of law. Similar to the findings regarding liberty over order, support for rule of law is robust in the circumstances described in these survey questions.

Questions 7 and 8 are a measure of support for minority rights in a majoritarian system. Similar to the other measures of support for democratic values, respondents are supportive of minority rights. A mere 14.1% of respondents agree that rights of the minority should be restricted to allow the majority to work its will. Only 5.1% of respondents disagree that the majority should always respect the rights of all minorities. On the whole, these questions indicate a fairly robust level of support for democratic values. Support for democratic values tends to be high and is a strong predictor of judicial legitimacy in much of the research on support for the courts. These survey results indicate that the sample falls generally in line with previous scholarly work regarding support for these important values. These results should be a reliable measure for analysis in chapters four and five.
Conclusion

Respondent knowledge of state supreme courts is quite low, while knowledge of the Supreme Court is reasonably high. This evidence intersects surprisingly with evidence from respondents that state supreme courts enjoy high levels of legitimacy. How is it possible to reconcile this reality in which citizens support institutions they know very little about? In the theory chapter, I develop a theory that citizens rely on their support for the Supreme Court to inform their support for state supreme courts, of which they are significantly less knowledgeable. This chapter tests a major assumption of my theory: that citizens are broadly lacking in knowledge about their state supreme courts. The pool I draw from Amazon’s Mechanical Turk is not perfectly representative of the population, but the non-political demographics are quite similar. Additionally, lack of knowledge about state supreme courts is incredibly widespread across demographic factors. It appears to make little difference based on age, education, race, partisan identification, or ideology. Just as my theory predicts, ignorance of state supreme courts appears to be quite widespread. In the next chapter, I explore potential causal mechanisms of how a sample that is largely ignorant of state supreme courts still expresses high levels of diffuse support for those institutions.
Table 3.1: Breakdown of the Sample by Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Number of Respondents</th>
<th>Percentage</th>
<th>2010 Census</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>361</td>
<td>53.6</td>
<td>49.2</td>
</tr>
<tr>
<td>Female</td>
<td>312</td>
<td>46.4</td>
<td>50.8</td>
</tr>
<tr>
<td>N</td>
<td>673</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.2: Breakdown of the Sample by Race

<table>
<thead>
<tr>
<th>Race</th>
<th>Number of Respondents</th>
<th>Percentage</th>
<th>2010 Census</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>37</td>
<td>5.5</td>
<td>4.8</td>
</tr>
<tr>
<td>Black</td>
<td>50</td>
<td>7.4</td>
<td>12.6</td>
</tr>
<tr>
<td>Hispanic</td>
<td>46</td>
<td>6.8</td>
<td>16.3</td>
</tr>
<tr>
<td>Native American</td>
<td>7</td>
<td>1.0</td>
<td>0.9</td>
</tr>
<tr>
<td>White</td>
<td>524</td>
<td>77.9</td>
<td>72.4</td>
</tr>
<tr>
<td>A Different Race</td>
<td>9</td>
<td>1.3</td>
<td>--</td>
</tr>
<tr>
<td>N</td>
<td>673</td>
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<td></td>
</tr>
</tbody>
</table>

Table 3.3: Breakdown of the Sample by Age

<table>
<thead>
<tr>
<th>Age</th>
<th>Number of Respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-29</td>
<td>227</td>
<td>33.7</td>
</tr>
<tr>
<td>30-39</td>
<td>235</td>
<td>34.9</td>
</tr>
<tr>
<td>40-49</td>
<td>104</td>
<td>15.5</td>
</tr>
<tr>
<td>50-59</td>
<td>73</td>
<td>10.9</td>
</tr>
<tr>
<td>60 and up</td>
<td>34</td>
<td>5.1</td>
</tr>
<tr>
<td>N</td>
<td>673</td>
<td></td>
</tr>
</tbody>
</table>
Table 3.4: Breakdown of the Sample by Party

<table>
<thead>
<tr>
<th>Party</th>
<th>Number of Respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>301</td>
<td>44.7</td>
</tr>
<tr>
<td>Republican</td>
<td>137</td>
<td>34.9</td>
</tr>
<tr>
<td>Independent/Other</td>
<td>235</td>
<td>20.4</td>
</tr>
<tr>
<td><strong>N = 673</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.5: Breakdown of the Sample by Ideology

<table>
<thead>
<tr>
<th>Ideology</th>
<th>Number of Respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Liberal</td>
<td>152</td>
<td>22.6</td>
</tr>
<tr>
<td>Somewhat Liberal</td>
<td>210</td>
<td>31.2</td>
</tr>
<tr>
<td>Moderate</td>
<td>142</td>
<td>21.1</td>
</tr>
<tr>
<td>Somewhat Conservative</td>
<td>130</td>
<td>19.3</td>
</tr>
<tr>
<td>Very Conservative</td>
<td>39</td>
<td>5.8</td>
</tr>
<tr>
<td><strong>N = 673</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3.6: Breakdown of the Sample by Education

<table>
<thead>
<tr>
<th>Education</th>
<th>Number of Respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some High school</td>
<td>5</td>
<td>0.7</td>
</tr>
<tr>
<td>High School Graduate</td>
<td>76</td>
<td>11.3</td>
</tr>
<tr>
<td>Some College</td>
<td>167</td>
<td>24.8</td>
</tr>
<tr>
<td>Trade/Tech/Vocational training</td>
<td>29</td>
<td>4.3</td>
</tr>
<tr>
<td>Associate’s Degree</td>
<td>52</td>
<td>7.7</td>
</tr>
<tr>
<td>Bachelor’s Degree</td>
<td>263</td>
<td>39.1</td>
</tr>
<tr>
<td>Master’s Degree</td>
<td>57</td>
<td>8.5</td>
</tr>
<tr>
<td>Professional Degree</td>
<td>14</td>
<td>2.1</td>
</tr>
<tr>
<td>Doctoral Degree</td>
<td>10</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>N = 673</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.7: Results of the Feeling Thermometer Questions

<table>
<thead>
<tr>
<th>Feeling Thermometer Questions</th>
<th>Mean</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support For the President and President-elect</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obama</td>
<td>59.5</td>
<td>34.0</td>
</tr>
<tr>
<td>Trump</td>
<td>27.0</td>
<td>32.7</td>
</tr>
<tr>
<td>Support for Other Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Congress</td>
<td>34.7</td>
<td>24.5</td>
</tr>
<tr>
<td>Local Police</td>
<td>60.8</td>
<td>27.5</td>
</tr>
<tr>
<td>Corporations</td>
<td>42.8</td>
<td>24.5</td>
</tr>
<tr>
<td><strong>N = 673</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3.8: Results of the Knowledge Self-Assessment Question

<table>
<thead>
<tr>
<th>Knowledge Self-Assessment</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>5.1</td>
</tr>
<tr>
<td>State Supreme Court</td>
<td>3.6</td>
</tr>
<tr>
<td>N = 673</td>
<td></td>
</tr>
</tbody>
</table>

Table 3.9: Results of the Judicial Knowledge Questions

<table>
<thead>
<tr>
<th>Court Knowledge Question Results</th>
<th>Percent Answering Correctly</th>
<th>Percent Answering Incorrectly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question Topic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Selection Method</td>
<td>16.8</td>
<td>83.2</td>
</tr>
<tr>
<td>State Term of Office</td>
<td>24.8</td>
<td>75.2</td>
</tr>
<tr>
<td>State Court Final Word on State Constitutional Issues</td>
<td>12.3</td>
<td>87.7</td>
</tr>
<tr>
<td>Supreme Court Chief Justice is John Roberts</td>
<td>77.4</td>
<td>22.6</td>
</tr>
<tr>
<td>Supreme Court is Final Word on American Constitutional Matters</td>
<td>88.0</td>
<td>12.0</td>
</tr>
<tr>
<td>Obama Appointed Two of Three Women on the Supreme Court</td>
<td>41.0</td>
<td>59.0</td>
</tr>
<tr>
<td>Supreme Court Term of Office</td>
<td>77.6</td>
<td>22.4</td>
</tr>
<tr>
<td>N = 673</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3.10: Results of Knowledge Questions Subset by Education

<table>
<thead>
<tr>
<th>Education</th>
<th>Selection Method Question</th>
<th>Term Length Question</th>
<th>State Supreme Court Final Word Question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage Answering Incorrectly</td>
<td>Percentage Answering Correctly</td>
<td>Percentage Answering Incorrectly</td>
</tr>
<tr>
<td>Some High School</td>
<td>80.0</td>
<td>20.0</td>
<td>80.0</td>
</tr>
<tr>
<td>High School Graduate</td>
<td>84.2</td>
<td>15.8</td>
<td>77.6</td>
</tr>
<tr>
<td>Some College</td>
<td>85.0</td>
<td>15.0</td>
<td>74.9</td>
</tr>
<tr>
<td>Trade/Tech/Vocational Training</td>
<td>89.7</td>
<td>10.3</td>
<td>79.3</td>
</tr>
<tr>
<td>Associate’s Degree</td>
<td>80.8</td>
<td>19.2</td>
<td>76.9</td>
</tr>
<tr>
<td>Bachelor’s Degree</td>
<td>85.6</td>
<td>14.5</td>
<td>79.5</td>
</tr>
<tr>
<td>Master’s Degree</td>
<td>70.2</td>
<td>29.8</td>
<td>61.4</td>
</tr>
<tr>
<td>Professional Degree</td>
<td>78.6</td>
<td>21.4</td>
<td>50.0</td>
</tr>
<tr>
<td>Doctoral Degree</td>
<td>83.2</td>
<td>16.8</td>
<td>40.0</td>
</tr>
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</table>

N = 673
Table 3.11: Results of Knowledge Questions Subset by Political Party

<table>
<thead>
<tr>
<th>Political Party</th>
<th>Percentage Answering Incorrectly</th>
<th>Percentage Answering Correctly</th>
<th>Percentage Answering Incorrectly</th>
<th>Percentage Answering Correctly</th>
<th>Percentage Answering Incorrectly</th>
<th>Percentage Answering Correctly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>83.1</td>
<td>16.9</td>
<td>75.4</td>
<td>24.6</td>
<td>88.7</td>
<td>11.3</td>
</tr>
<tr>
<td>Republican</td>
<td>82.5</td>
<td>17.5</td>
<td>74.0</td>
<td>26.0</td>
<td>86.0</td>
<td>14.0</td>
</tr>
<tr>
<td>Independent/Other</td>
<td>83.8</td>
<td>16.2</td>
<td>76.6</td>
<td>23.4</td>
<td>88.3</td>
<td>11.7</td>
</tr>
</tbody>
</table>

N = 673
Table 3.12: Results of Knowledge Questions Subset by Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Selection Method Question</th>
<th>Term Length Question</th>
<th>State Supreme Court Final Word Question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage Answering Incorrectly</td>
<td>Percentage Answering Correctly</td>
<td>Percentage Answering Incorrectly</td>
</tr>
<tr>
<td>Male</td>
<td>82.6</td>
<td>17.5</td>
<td>78.1</td>
</tr>
<tr>
<td>Female</td>
<td>84.0</td>
<td>16.0</td>
<td>71.8</td>
</tr>
</tbody>
</table>

N = 673
Table 3.13: Results of Knowledge Questions Subset by Race

<table>
<thead>
<tr>
<th>Race</th>
<th>Selection Method Question</th>
<th>Term Length Question</th>
<th>State Supreme Court Final Word Question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage Answering Incorrectly</td>
<td>Percentage Answering Correctly</td>
<td>Percentage Answering Incorrectly</td>
</tr>
<tr>
<td>Asian</td>
<td>86.5</td>
<td>13.5</td>
<td>75.7</td>
</tr>
<tr>
<td>Black</td>
<td>72.0</td>
<td>28.0</td>
<td>70.0</td>
</tr>
<tr>
<td>Hispanic</td>
<td>87.0</td>
<td>13.0</td>
<td>71.7</td>
</tr>
<tr>
<td>Native American</td>
<td>71.4</td>
<td>28.6</td>
<td>71.4</td>
</tr>
<tr>
<td>White</td>
<td>83.8</td>
<td>16.2</td>
<td>76.0</td>
</tr>
<tr>
<td>A Different Race</td>
<td>88.9</td>
<td>11.1</td>
<td>77.8</td>
</tr>
</tbody>
</table>

N = 673
Table 3.14: Results of Knowledge Questions Subset by Age

<table>
<thead>
<tr>
<th>Age</th>
<th>Selection Method Question</th>
<th>Term Length Question</th>
<th>State Supreme Court Final Word Question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage Answering Incorrectly</td>
<td>Percentage Answering Correctly</td>
<td>Percentage Answering Incorrectly</td>
</tr>
<tr>
<td>18-29</td>
<td>83.7</td>
<td>16.3</td>
<td>78.0</td>
</tr>
<tr>
<td>30-39</td>
<td>84.3</td>
<td>15.7</td>
<td>74.5</td>
</tr>
<tr>
<td>40-49</td>
<td>83.7</td>
<td>16.4</td>
<td>69.2</td>
</tr>
<tr>
<td>50-59</td>
<td>80.8</td>
<td>19.2</td>
<td>75.3</td>
</tr>
<tr>
<td>60 and Up</td>
<td>76.5</td>
<td>23.5</td>
<td>79.4</td>
</tr>
</tbody>
</table>

N = 673
Table 3.15: Results of Knowledge Questions Subset by Ideology

<table>
<thead>
<tr>
<th>Ideology</th>
<th>Selection Method Question</th>
<th>Term Length Question</th>
<th>State Supreme Court Final Word Question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage Answering Incorrectly</td>
<td>Percentage Answering Correctly</td>
<td>Percentage Answering Incorrectly</td>
</tr>
<tr>
<td>Very Liberal</td>
<td>82.9</td>
<td>17.1</td>
<td>77.6</td>
</tr>
<tr>
<td>Somewhat Liberal</td>
<td>84.3</td>
<td>15.7</td>
<td>74.8</td>
</tr>
<tr>
<td>Moderate</td>
<td>85.2</td>
<td>14.8</td>
<td>73.9</td>
</tr>
<tr>
<td>Somewhat Conservative</td>
<td>85.4</td>
<td>14.6</td>
<td>75.4</td>
</tr>
<tr>
<td>Very Conservative</td>
<td>64.1</td>
<td>35.9</td>
<td>71.8</td>
</tr>
<tr>
<td>N = 673</td>
<td></td>
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<td></td>
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</tbody>
</table>
Table 3.16: Results of Questions Asking about Confident in the Courts

<table>
<thead>
<tr>
<th>Court Confidence</th>
<th>Number of respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>More Confidence in the Supreme Court</td>
<td>318</td>
<td>47.3</td>
</tr>
<tr>
<td>More Confidence in State Supreme Court</td>
<td>91</td>
<td>13.5</td>
</tr>
<tr>
<td>Equal Confidence in Both</td>
<td>65</td>
<td>9.7</td>
</tr>
<tr>
<td>No Confidence in Either</td>
<td>199</td>
<td>29.6</td>
</tr>
</tbody>
</table>

N = 673

Table 3.17: Results of Index of State Supreme Court Legitimacy

<table>
<thead>
<tr>
<th>Number of Responses in Support of the Respondent’s State Supreme Court</th>
<th>Percent</th>
<th>Cumulative percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>7.73</td>
<td>7.7</td>
</tr>
<tr>
<td>1</td>
<td>11.74</td>
<td>19.5</td>
</tr>
<tr>
<td>2</td>
<td>12.33</td>
<td>31.8</td>
</tr>
<tr>
<td>3</td>
<td>11.14</td>
<td>42.9</td>
</tr>
<tr>
<td>4</td>
<td>13.52</td>
<td>56.5</td>
</tr>
<tr>
<td>5</td>
<td>12.78</td>
<td>69.2</td>
</tr>
<tr>
<td>6</td>
<td>11.14</td>
<td>80.4</td>
</tr>
<tr>
<td>7</td>
<td>9.66</td>
<td>90.0</td>
</tr>
<tr>
<td>8</td>
<td>6.69</td>
<td>96.7</td>
</tr>
<tr>
<td>9</td>
<td>3.27</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Table 3.18: Results of the Individual Components of the Index of State Supreme Court Support

| Statements that Comprise the Measure of State Supreme Court Legitimacy | Percent of Respondents Answering With: |
|---|---|---|---|---|---|
| | Strongly Agree | Agree | Uncertain | Disagree | Strongly Disagree |
| Eliminate Court if People Dislike It | 5.2 | 15.8 | 20.7 | 40.7 | 17.7 |
| Obey Court Even if People Dislike It | 15.3 | 54.2 | 19.3 | 8.8 | 2.4 |
| Jurisdiction of the Court Reduced on Controversial Issues | 4.6 | 20.4 | 27.9 | 35.5 | 11.6 |
| Trust the Court to Make Good Decisions | 7.6 | 47.0 | 25.0 | 15.6 | 4.9 |
| Judges Should be Removed if they Rule at Odds with the People too often | 8.5 | 24.7 | 27.9 | 30.8 | 8.2 |
| Court Should be Less Independent so that it Listens to the People | 9.8 | 30.6 | 21.3 | 26.3 | 12.0 |
| Stronger Controls Should be in Place to Prevent Court from being Involved in Politics | 18.0 | 33.4 | 27.6 | 15.8 | 5.2 |
| Court is too Mixed Up in Politics | 10.3 | 23.9 | 34.5 | 26.1 | 5.2 |
| Court Interprets Constitution, not the People | 4.2 | 21.8 | 27.9 | 32.1 | 14.0 |

N = 673
Table 3.19: Results of the Index of Support for Democratic Values

<table>
<thead>
<tr>
<th>Statements that Measure Support for Democratic Values</th>
<th>Percent of Respondents Answering With:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Strongly Agree</td>
</tr>
<tr>
<td>Society should not put up with extreme political ideas different from the majority</td>
<td>3.7</td>
</tr>
<tr>
<td>It is not necessary to obey laws that the respondent considers unjust</td>
<td>3.7</td>
</tr>
<tr>
<td>Better to live in an orderly society than allow people the freedom to be disruptive</td>
<td>6.4</td>
</tr>
<tr>
<td>Sometimes better to ignore the law and solve problems immediately than wait for a legal solution</td>
<td>2.8</td>
</tr>
<tr>
<td>Free speech is not worth it if we have to put up with the danger to society of extremist political views</td>
<td>1.9</td>
</tr>
<tr>
<td>Government should have some ability to bend the law in order to solve pressing social and political problems</td>
<td>2.1</td>
</tr>
<tr>
<td>In politics, the majority ought to get what it wants even if the rights of some minorities are restricted</td>
<td>3.0</td>
</tr>
<tr>
<td>Majority rule is important, but the majority must always respect the rights of the minority</td>
<td>47.1</td>
</tr>
</tbody>
</table>

N = 673
CHAPTER 4
STATE SUPREME COURT LEGITIMACY AND THE UNITED STATES SUPREME COURT AS A HEURISTIC

In the theory chapter, I lay out a broad theory of how citizens overcome their ignorance of state supreme courts when deciding whether to confer legitimacy on those institutions. Succinctly, many citizens possess very low levels of knowledge about state supreme courts but comparatively high levels of knowledge about the United States Supreme Court. I argue that citizens rely on what they know and feel about the Supreme Court to inform what they think and feel about their own state supreme court. Of course, I do not theorize that this occurs in a vacuum. I expect that support for democratic values and individual levels of education also play a positive role in conferring judicial legitimacy, even among respondents with lower levels of state supreme court knowledge.

In this chapter, I will test the primary theoretical argument of this dissertation: does the Supreme Court act as a cue for citizens when they decide whether they should confer legitimacy on state supreme courts they know relatively nothing about?

Previous research on judicial legitimacy at the state supreme court level makes an implicit assumption that a reasonable portion of the population knows enough about state supreme courts to make informed decisions about those institutions as individual, distinct entities. Scholars treat the widespread ignorance of state supreme courts as a control variable, or the least attentive respondents are excluded from the analysis. While these are perfectly acceptable approaches to answer some research questions, particularly those
that focus on the scholarly debate surrounding the influence of judicial elections, I argue that directly analyzing the widespread ignorance of state high courts reveals the existence of an overlooked and intriguing dynamic. In this chapter, I will test two of the hypotheses I develop in the theory chapter:

**Supreme Court Cue Hypothesis:** Among citizens with low knowledge of state supreme courts, support for the Supreme Court acts as a cue informing whether those citizens should extend legitimacy to the state supreme court.

**Negative Supreme Court Cue Hypothesis:** If the legitimacy of the Supreme Court is harmed or called into question, this will have a negative influence on state supreme court legitimacy.

The Supreme Court Cue Hypothesis and the Negative Supreme Court Cue Hypothesis are testing the similar theoretical concept that citizens rely on the Supreme Court to inform their opinions. To test this, I randomly assign respondents into a treatment group that provides a brief script to read. There are five treatments: two dealing with diffuse support, two dealing with specific support, and a group that does not receive a treatment.\(^{47}\) Recall from the theory chapter that there is a positive diffuse support prompt and a negative diffuse prompt.\(^{48}\) As I argue in the theory chapter, positive diffuse support should not influence state supreme court legitimacy because it is merely reinforcing what many likely think about the Supreme Court.

Much of the research to date reveals that legitimacy of American courts is generally quite strong. However, if courts engage in behavior that citizens perceive as

\(^{47}\) I detail the concepts of diffuse support and specific support in the theory chapter.

\(^{48}\) For the sake of convenience, the treatment language is available in the chapter appendix.
overtly politicized, those actions possess the potential to harm judicial legitimacy, at least in the short term (Gibson 2012, 2008, 2009). To capture this dynamic and test it, the negative diffuse treatment is written in a way that captures the essence of diffuse support and calls the legitimacy of the Supreme Court into question. The language casts the Supreme Court as being just like the rest of partisan and political Washington. The language also characterizes the judges as highly politicized in their voting, indicating that party line votes happen frequently. Further, the treatment informs respondents that this tendency to vote by party line has been going on for forty years in order to trigger a reaction in the participants so that they are likely to view the Supreme Court partisan line as a common and enduring pattern rather than a one-off event. This is an attempt to call into question the underpinning of diffuse support for the Supreme Court by casting it as yet another political and politicized actor in the federal government. Easton (1965, 1975) offered that diffuse support is built or lost based on the occurrence of specific events that people support or oppose. The treatment I construct is an attempt to elicit such a thought process in the minds of respondents, encouraging them to think that the United States Supreme Court frequently engages in specific behaviors of which the respondents might disapprove of.

The strength of the Supreme Court’s judicial legitimacy appears to arise from its distinction as a non-politicized entity in the government. If my theory is correct, the negative diffuse support treatment is the only treatment that influences state supreme court legitimacy, and it will do so in a negative direction among respondents with low levels of knowledge about these courts. I argue that while respondents with low state high court knowledge likely know something about the Supreme Court and probably have
positive feelings about it, they are susceptible to politicized descriptions of the court that match generally negative feelings about politicians as a whole. Since they have low knowledge of their state supreme court and fewer points of reference concerning it, they use the Supreme Court as a guide when deciding to confer legitimacy on the state institution they know little about. Thus, evidence of reliance on the Supreme Court as a cue informing state supreme court legitimacy is most likely to emerge among respondents who receive this treatment. Conversely, the Negative Diffuse Treatment is less likely to influence respondents with greater state high court knowledge because they are not as reliant on their knowledge and perceptions about the Supreme Court to guide whether they should confer legitimacy on their state supreme court.

The specific support treatments are National Public Radio (NPR) articles from the year 2016. The first deals with President Barack Obama’s controversial nomination of Merrick Garland to replace Antonin Scalia. The appointment receives support from Democrats and opposition from Republicans, who pledge to stonewall the nomination. Respondents take the survey in December 2016 and January 2017. Donald Trump is the winner of the 2016 presidential election, and the nomination of Garland fails. However, the article serves primarily as a reminder of the politicized process for nominations in the form of a one-time event. Gibson (2007) finds that the politicized nomination process is harmful to Supreme Court legitimacy. I argue, though, that this treatment is unlikely to influence state supreme court legitimacy. It is an article from early in the nomination process several months prior to the survey distribution, and since the Senate never takes

49 There is evidence that the open Supreme Court seat was not as important as an issue in 2016 voting than retrospective analysis might have us believe. While there is evidence the open seat on the Supreme Court was important for evangelical Republican voters, the exit polls indicate that it was not the highest concern for those voters (Silver 2018).
up the nomination, it does not become politicized in the same way as other nominations that involve hearings and potential justices engaging with a more political branch. Further, while the nomination of Garland and the ensuing political games are certainly a politicized event, it is a one-off event heavily influenced by actions in the legislature, and it is characterized as such in the article.

That being said, given the fraught nature of the nomination and subsequent Republican refusal to give Garland a vote in addition to previous evidence that politicized nominations can harm legitimacy, including this sort of specific event in the test may illuminate how harmful the partisan politics of such an event continue to be months after Republicans officially refused to vote on an Obama nominee. If the variable measuring the influence of this treatment is a significant predictor of state supreme court legitimacy, it gives scholars additional information on how long this type of specific event negatively impacts judicial legitimacy. Further, any cascading influence on lower courts in the United States based on federal Supreme Court nominations indicates further evidence that respondents rely on events that happen on the federal level to guide their decisions about state level judges. However, since this example of specific support is one that does not reach the heights of controversy other appointments often achieve, I do not expect it to influence state supreme court legitimacy among respondents with low levels of knowledge.

The second specific support treatment is an NPR article recounting the Supreme Court’s decision in *Whole Woman’s Health v. Hellerstedt* (2016). The 5-3 decision overturns a Texas law that makes it more difficult to receive an abortion. The topic of

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50 Samuel Alito’s nomination is the source of Gibson’s research and is much more contentious than anything Garland faced, since the Senate never debates Garland’s nomination.
abortion is perennially controversial, and the language in the article describes the decision as one that Democrats applaud and Republicans bemoan. However, as with the specific treatment about the controversial appointment, this is cast as a one-time occurrence that is not part of a larger pattern harmful to legitimacy. Citizens already perceive the courts as legitimate institutions, and that loyalty inoculates the court from much harm based on individual actions. Thus, I expect that the specific treatments have no influence on state supreme court legitimacy.

To recap, I argue that state supreme court legitimacy is partially conferred from perceptions of Supreme Court support among individuals with very low levels of knowledge about state supreme courts. I expect the only treatment to influence state supreme court legitimacy is the Negative Diffuse Treatment. If the results provide evidence in support of the theory, respondents with low levels of knowledge who receive the Negative Diffuse Treatment are likely to perceive their state supreme court as less legitimate than those who do not receive any treatment. I expect no other treatments have any influence on state supreme court legitimacy.

Elections, Knowledge, and the Experimental Treatment

In the previous chapter, I provide evidence that many individuals appear to know little about their state supreme courts even as they show greater knowledge about the United States Supreme Court. Results like these are not unique to this study, as the levels of state high court knowledge results I find are similar to those found in other studies of state court legitimacy (Gibson 2012). In this chapter, I seek to answer how this state high court ignorance influences perceptions of the legitimacy of those judicial institutions. The rest of this chapter is a direct test of the hypothesis that respondents with lower levels of
state supreme court knowledge are more likely to rely on what they know and think about the United States Supreme Court as a cue when deciding whether they should confer legitimacy on state institutions of which they appear to be largely uninformed. I turn next to a description of the data I rely on for this test before analyzing the results.

I survey respondents on Amazon’s Mechanical Turk. The model I use is similar to that in previous studies of court legitimacy. I rely on ordinary least squares regression analysis to measure various influences on a summated index of questions to assess a respondent’s loyalty to a court as the dependent variable. I follow the lead of previous scholars (Gibson 2012; Bartels and Johnson 2013) who provide a measure of judicial legitimacy that captures diffuse support rather than specific support. The dependent variable is a measure of loyalty to state supreme courts. Respondents receive the following statements to which they may strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree:

1. If the supreme court of my state started making a lot of decisions that most people disagree with, it might be better to do away with the supreme court of my state altogether.

2. The supreme court of my state should be listened to, even if I disagree with the ruling.

3. The right of my state supreme court to decide certain types of controversial issues should be reduced.

4. The supreme court of my state can usually be trusted to make decisions that

51 I fully detail the data collection process in the theory chapter.
52 Bolded text is in the survey instrument to emphasize that the statements are about state supreme courts and not the United States Supreme Court.
are right for the state as a whole.

5. Judges of the supreme court of my state who routinely make decisions at odds with the majority of the people of my state should be removed from office.

6. The supreme court of my state ought to be made less independent so that it listens a lot more to what the people want.

7. There should be stronger controls in place to prevent the supreme court of my state from becoming involved in politics.

8. The supreme court of my state gets too mixed up in politics.

9. The supreme court of my state may have ideas about what the constitution means, but it is more important what the majority of the people think the constitution means.

After removing question number four, which deals with trusting the court (see footnote), Common Factor Analysis reveals a unidimensional structure with an eigenvalue of 2.18. Given the unidimensional nature factor analysis reveals, I rely on the summated eight question index to measure institutional loyalty that serves as the dependent variable. The correlation between the factor score and summated index of eight questions without the trust question is .99.

Some previous research on court legitimacy excludes the non-attentive public from analyses of judicial legitimacy (Gibson 2012; Gibson and Caldeira 2003). However, since I am specifically interested in the ways in which respondents overcome their

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53 There is evidence the trust statement (statement 4) is capturing specific support rather than diffuse support. Since scholars are still debating whether to include it, I also include it in the survey. However, I drop this statement from the final analysis because the case against including it is strong. Notably, excluding the question from the index of support does not significantly alter the findings in any considerable way. See Gibson’s (2011) article for further explanation.
ignorance of state supreme courts and this is not a study of the influence of any specific campaign activities, I do not separate out the non-attentive public.\textsuperscript{54} I transform respondent answers to the dependent variable questions to account for reverse scoring and code their responses as either answering in support of their state supreme court or as not supportive.\textsuperscript{55} I then create a variable that adds the number of supportive responses for the eight statement set, excluding the trust statement.\textsuperscript{56} To make the analysis as simple and direct as possible, the dependent variable is the summated index of support for the eight statements.\textsuperscript{57} In other words, the variable is an index of the number of times each respondent supports the court. Next, I turn to the explanatory variables and what the theory indicates their influence might be.

\textit{Treatment Variables}

The primary independent variables that test the influence of the Supreme Court as a cue are the five treatment variables.\textsuperscript{58} Each respondent randomly receives one of the four treatments or no treatment. Two of the treatments attempt to trigger thoughts about diffuse support for the United States Supreme Court and cast it as worthy or unworthy of diffuse support. Those variables are labeled Positive Diffuse Support Treatment and Negative Diffuse Support Treatment. The other two treatments attempt to trigger thoughts of specific support for the United States Supreme Court, focusing either on a controversial decision about abortion or an ideological appointee to the Supreme Court. I

\textsuperscript{54} Further, while this was the custom for many years, scholars have recently moved away from reliance only on the attentive public (Zilis 2018; Gibson and Nelson 2016, 2015; Bartels and Johnston 2013; Gibson et al. 2011).

\textsuperscript{55} Respondents who answer “neither agree nor disagree” in response to a dependent variable question are coded as not supportive.

\textsuperscript{56} The eigenvalue of the second extracted factor is .50.

\textsuperscript{57} I follow the custom in the literature and scale the dependent variable 0-1.

\textsuperscript{58} The treatment language respondents receive is available in the appendix.
code the variables as 1 if the respondent receives the particular treatment, or lack of
treatment, and 0 otherwise. I omit the no treatment variable from the analysis to serve as
a baseline for comparison. I expect that the only treatment with a statistically significant
influence is the Negative Diffuse Support Treatment variable among respondents with
low levels of state supreme court knowledge in states that do not elect judges.
Theoretically, I expect the election process to influence enough respondents so that, while
they may not be able to answer knowledge questions, they are likely more familiar with
their state supreme courts due to campaigns and elections. I expect the influence on the
dependent variable to be negative. I expect that none of the treatments are significant
among respondents with higher levels of state supreme court knowledge.

Democratic Values

In previous research of judicial legitimacy, support for democratic values emerges
as a strong predictor of court support. To measure support for democratic values, I
include questions that measure political tolerance of minority opinions as well as support
for the rule of law and liberty over order.59 I code each response as either supportive or
not supportive of the particular value in question. In previous works using these types of
variables, it is sometimes possible to construct a single variable of support for democratic
values using a summated index of the responses. While factor analysis reveals a single
factor with an eigenvalue of 1.24, not all of the variables load on it.60 The correlation
between the summated index of democratic values and the factor score is .83. However,
this is a closer approximation to a unidimensional result than index variables that seek to

59 See the appendix for the questions respondents receive about democratic values. The questions are
borrowed from Gibson’s (2006) work on state supreme court legitimacy in Kentucky and are available in
the index.
60 The eigenvalue of the second factor is .64.
measure rule of law, liberty over order, and support for minority opinions separately. Among these individual index variables, no single factor emerges. Thus, while I cannot say with full reliability that the variable captures a single dimension, it is closer to doing so than the other variables, and I rely on it in the analysis. Since support for democratic values is usually a strong predictor of state court support, including this variable in the models makes them a more robust test of my theory.

_Court Knowledge and Education_

Beyond democratic values, two additional variables are frequently influential in judicial legitimacy scholarship: education and knowledge of the courts.\textsuperscript{61} For this analysis, I separate out those who have no knowledge of state courts from those who have some knowledge. Respondents receive three questions about state supreme courts and four questions about the Supreme Court. I code them as answering the questions correctly or incorrectly.\textsuperscript{62} I add together the number of correct answers for each to create count variables of Supreme Court knowledge and state supreme court knowledge. For the test of my theory, I divide those who answer zero questions correctly about state supreme courts from those who answer one or more questions correctly.\textsuperscript{63,64} I code education from less than high school diploma to doctorate. This allows for an interpretation of a coefficient as a response to increasing education. I expect the democratic values variable as well as the education variable to report positive statistically significant coefficients. Additionally, I expect knowledge of the Supreme Court to have a positive and significant

\textsuperscript{61} Previous measures of court knowledge focus on basic facts about courts including the selection process for judges as well as term length. I follow suit in this study.

\textsuperscript{62} Survey questions are available in the index.

\textsuperscript{63} When I refer to citizens with low levels of knowledge about state supreme courts, I refer to those who answer zero factual questions correctly about those institutions.

\textsuperscript{64} I divide the respondents here as close to the median as I can. Nearly 59% (N= 397 out of 673) of respondents answer zero knowledge questions about their state supreme court correctly.
influence among citizens with low knowledge about their state supreme court.

Measures of Partisanship

The scholarly debate about the influence of partisanship and ideology on judicial legitimacy generally shows that these factors do not influence judicial legitimacy.\(^{65}\) However, I include them in this analysis to see if there are any unexpected partisan influences. I code party as 1 for Democrats, 2 for Independents, and 3 for Republicans so that any change in the regression coefficients results from respondents becoming more Republican. I follow this logic as I code ideology as well so that any coefficient result indicates movement as respondents shift from very liberal to very conservative. Additionally, the survey results come from December of 2016 and January of 2017. Given that time frame, I include feeling thermometers about President Obama and, at the time, President-elect Trump. I ask respondents to rank how warmly they feel about either person on a scale of 0 to 100, where 0 is very cold and 100 is very warm. Since my study focuses on those with the least amount of state supreme court knowledge, I include these thermometer variables because they are less abstract than partisanship or ideology and may reveal an unexpected influence of partisanship on support for state supreme courts.

Demographic Variables

I include the demographic variables of age, gender, and race. I code the age variable categorically in roughly 10-year age ranges from 18 and above.\(^{66}\) I code gender as 0 for male and 1 for female and label the variable Woman. I include a dummy variable

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\(^{65}\) See Bartels and Johnson (2013) for evidence that partisanship does play a role. However, much additional scholarship does not support their finding (Gibson and Nelson 2017; Gibson 2012; Gibson 2008).

\(^{66}\) The original survey instrument includes a category for “younger than 18” as a way to reject respondents who do not meet the official criteria. While there are zero respondents in the age category of “younger than 18,” I leave it in the data because it was in the original survey instrument.
for white respondents. The baseline for comparison of race are non-white respondents. This is primarily because of the very small N of some racial minorities once the sample is subset into different categories. I do not expect the demographic variables to influence support for state supreme courts in this model. I include a brief description of the explanatory variables in Table 4.1.

**Testing the Supreme Court Cue and Negative Supreme Court Cue Hypotheses**

The primary question this dissertation seeks to address is whether citizens rely on what they think and feel about the Supreme Court as a cue to inform how they feel about state supreme courts when they lack knowledge of those state institutions. Using data based on vignettes embedded in an experimental survey, I offer two tests of my theory. First, I conduct a multivariate analysis of all survey respondents. I find evidence of the Supreme Court as a cue in the full model and then subset respondents in the multivariate analysis between those who answer zero questions about their state supreme court correctly and those that answer one or more questions correctly. Both tests reveal evidence that respondents with low levels of knowledge appear to rely on the Supreme Court as a cue to inform what they think about state supreme courts. Further, this heuristic effect has the potential to negatively influence state high court legitimacy.

**Multivariate Analysis of the Full Model**

I begin by pointing out the first four rows of the ordinary least squares (OLS) regression results that represent the treatment variables in Table 4.2. Among all respondents, the only treatment variable with a statistically significant influence on state supreme court legitimacy is the Negative Diffuse Support Treatment variable, shaded in dark gray. The results are in line with what my theory predicts. The Positive Diffuse
Support Treatment variable does not appear to influence state supreme court legitimacy for respondents, nor do the two specific support treatments that invoke an ideological appointee or a controversial court decision. Further, the influence of the Negative Diffuse Support Treatment variable is stronger than any other significant predictor of state supreme court legitimacy. The Negative Diffuse Support Treatment is not only a strong predictor of state supreme court legitimacy in this model, but it is also negative. This indicates that, in comparison to respondents who do not receive a treatment, those who receive the Negative Diffuse Support Treatment are less likely to confer legitimacy on state supreme courts than their counterparts who never received a treatment.

The knowledge variables also indicate somewhat indirect support for my theory. The Supreme Court Knowledge variable is significant and positive, indicating that respondents who know more about the Supreme Court are more likely to confer legitimacy on state supreme courts. However, state supreme court knowledge is not a significant predictor of state high court legitimacy. These results are supporting evidence that knowledge of the Supreme Court influences state supreme court legitimacy and does so in a way that enhances state high court legitimacy. The results from the Supreme Court Knowledge variable and the Negative Diffuse Support Treatment variable provide some support for the Supreme Court Cue Hypothesis. While not isolated only among respondents with low levels of state supreme court knowledge, this model does show evidence that the Supreme Court may be acting as a heuristic to guide support for state supreme courts for respondents.

As is common in studies of judicial legitimacy, support for democratic values is a significant and positive predictor of state supreme court legitimacy. Given the scholarship
that shows how closely Americans link ideas of democratic values and the courts, this is not surprising. Along the same lines, greater education is a positive predictor of state supreme court legitimacy, and so is age. Given that higher levels of education may tend to come with more exposure to and knowledge of democratic government, it makes sense that this also reaps positive benefits for state supreme court legitimacy. Age is a slightly unexpected significant predictor. I have no reason theoretically to expect age to influence state supreme court legitimacy. It may be possible that age is acting here as an imperfect proxy for greater political knowledge acquired over time as respondents live and experience governments and courts. However, absent further data for support, I cannot claim this with any degree of certainty.

None of the variables measuring partisanship or ideology are significant predictors of court support, as I expect. Additionally, while the variable measuring race does not report a significant coefficient, the variable measuring gender does. In the full model of all respondents, women are less likely than men to confer legitimacy upon state supreme courts. Similar to the age result, this result is unexpected. Given the results in the previous chapter detailing the demographics of the survey respondents, there is no reason to expect that women might perceive of their state supreme court as less legitimate than men who take the survey. While this table does not provide enough evidence to determine why this result exists, the upcoming models do helps illuminate this result a bit.

Multivariate Analysis of Respondents Subset by State Supreme Court Knowledge Levels

In Table 4.3, I subset respondents by their level of state supreme court knowledge. The first column reports the OLS results among respondents who answer zero knowledge
questions about their state supreme courts correctly. The second column reports the OLS results among respondents who answer one or more knowledge questions correctly. I call your attention to the shaded cells in Table 4.3. The predicted null results are highlighted in light gray, and the hypothesized negative result is highlighted in dark gray. Subsetting respondents by knowledge reveals further evidence in support of my theory. Respondents in the first column who answer zero questions about their state supreme court correctly and receive the Negative Diffuse Support Treatment are less likely to confer legitimacy on their state high courts than their counterparts who do not receive a treatment. Among respondents in the second column who answer one or more state high court knowledge questions correctly, the Negative Diffuse Support Treatment variable is not a significant predictor. Further, Supreme Court knowledge is a significant and positive predictor of state supreme court legitimacy among respondents with low levels of state supreme court knowledge. Among respondents with higher levels of state supreme court knowledge, the influence of the Supreme Court disappears. These results are the strongest yet in support of the Supreme Court Cue and the Negative Supreme Court Cue hypotheses for this chapter.

The rest of the results from these subset models are generally in line with expectations. Support for democratic values is a positive predictor in both models, although the coefficient is twice as large for respondents with higher levels of state supreme court knowledge. It may be that this result reflects greater familiarity with democratic norms and values that come with greater knowledge of state high court institutions specifically and other institutions more broadly, and with this, an understanding of how those norms work in support of the courts. Education is a
significant and positive predictor of state supreme court legitimacy for both subset models, as expected. This is further evidence that greater educational attainment may be a net positive for judicial legitimacy at the state level, even among respondents who know very little about those institutions. The results in total support previous scholarly findings that support for democratic values and greater educational attainment are closely linked with support for judicial legitimacy.

The results measuring partisanship and ideology are similar to those in the full model where none of the coefficients are statistically significant. These results across the three models in this chapter support scholarly thought that courts exist in the minds of Americans as institutions separate from partisanship and ideology. That the influence of partisanship and ideology is so nonexistent in these results is interesting particularly because respondents took the survey in December 2016 and January 2017, when partisan politics in the United States was particularly fraught and divisive. While not a direct test of the influence of partisanship on state court support, this does provide some evidence that, in increasingly politically polarized times, ideology and partisanship are not factors in state supreme court legitimacy among respondents of this survey.

Among the demographic variables, age is a significant and positive predictor in both subset models, while race does not report a significant coefficient. This indicates that white respondents are not more or less likely to confer legitimacy on their state supreme courts than their counterpart respondents who do not identify as white. The gender variable does produce an interesting result that provides a bit more insight to the result for the Woman variable I report in the full model. The Woman variable is not a significant predictor of state supreme court legitimacy among respondents who answer
zero state supreme court knowledge questions correctly. However, among respondents who answer one or more state supreme court questions correctly, gender is a significant and negative influence on state high court legitimacy. Among these respondents with higher state high court knowledge, women are less likely than men to confer legitimacy on their state supreme courts. Additionally, the coefficient is the highest significant result in that model, indicating this influence is particularly strong in comparison to the other explanatory variables. While it is useful to more closely isolate the influence of gender on state supreme court legitimacy among survey respondents with greater state supreme court knowledge, this does not provide significant information from which to provide an adequate interpretation. However, the following chapter that tests the Elected Judge Hypothesis will provide more context for this influence.

**Discussion**

The results in the full model and the model subset by levels of knowledge are evidence in support of the Supreme Court Cue Hypothesis and the Negative Supreme Court Cue Hypothesis. If state supreme courts exist in the minds of respondents with low state high court knowledge as independent institutions for the purposes of conferring legitimacy, the United States Supreme Court should not influence state supreme court legitimacy. However, these results provide strong evidence that respondents with low levels of state supreme court knowledge rely on the United States Supreme Court to help inform their opinions about state supreme court legitimacy.

Similar to previous findings, education and support for democratic values are positive predictors of state supreme court knowledge across the models. Further, knowledge of the Supreme Court is a positive predictor of state supreme court legitimacy,
both in the full model and among respondents with low levels of state supreme court knowledge. I offer a slight variation on a well-worn saying in the judicial legitimacy literature: to know the Supreme Court is to love your state supreme court if you are ignorant of that institution. These results help to situate this study within what scholars understand about state supreme court legitimacy. The same factors that influence judicial legitimacy in other studies are present in these results, but here I illuminate a process that previous scholars pay less attention to: testing the influence of respondent ignorance of state high courts reveals evidence of a reliance on the Supreme Court as a heuristic when conferring legitimacy. This result helps to deepen and complicate our understanding of judicial legitimacy.

The potential implications include that, for many people, the lack of knowledge of state supreme courts makes those institutions potentially vulnerable to the behavior of other institutions they share no direct association with. Respondents with low levels of knowledge appear particularly susceptible to charges that detail behavior by the Supreme Court as overtly politicized. In the Negative Diffuse Support Treatment, I call into question the legitimacy of the Supreme Court which, in turn, negatively influences state supreme court legitimacy. This finding indicates the potential for trouble, given the heightened state of partisanship at the federal level and the broad degree of respondent ignorance concerning state supreme courts. However, the specific support treatments did not cast a significant influence on state supreme court legitimacy, indicating that one-time politicized events may not necessarily be harmful to lower institutions.

Expanding concerns about judicial legitimacy to the limit, in the event that the Supreme Court loses diffuse support among the broader population, state supreme courts
are not automatically safe among those who know next to nothing about those state institutions. While this outcome is admittedly unlikely, it is important to contemplate a situation where the Supreme Court loses legitimacy and the effect cascades through the rest of the judicial system. This may point to a simultaneous strength and weakness particular to the American judicial system. Legitimacy of the courts in the minds of many may be a product of the highest federal court, which is a strength because of the quality of the justices and their awareness of the importance of maintaining diffuse support. At the same time, those strengths exist in individuals that make up the institutions, not the institution itself, and that positive influence remains only so long as the justices continue to make it so through their behavior and judicial decisions.

Additionally, ignorance of state supreme courts may be both a blessing and a curse. Many respondents were shown to be ignorant of state supreme courts and probably are not aware of most actions taken by their state supreme courts. As a positive for courts, this may reduce the likelihood that any series of actions or decisions might harm their legitimacy. People cannot be upset about events they do not know are occurring. However, to overcome this ignorance, many citizens are shown to rely on what they know and feel about the Supreme Court, which puts the legitimacy of state high courts in the hands of a higher institution over which they have no control. This is positive so long as perceptions of Supreme Court legitimacy are high and controversial decisions by the state courts do not receive wide attention. If either perception or attention change, this research has shown how the well of support among respondents with low state high court knowledge is susceptible to changes occurring at the Supreme Court level. Additionally,

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67 It is growing in importance to consider this as more politicians in the United States, including President Trump, appear willing to cast aspersions on the court that may harm institutional legitimacy.
this ignorance may make state high courts susceptible to court curbing by legislatures and governors—a situation citizens likely would not tolerate if it were done to the Supreme Court by congress and/or the president.

Given these potential concerns, it is important to point out that, for now, state supreme courts appear to continue operating outside of some of the more partisan pressures the United States is experiencing. Across the models, none of the partisanship or ideology measures influence state supreme court legitimacy. While these are not definitive findings on the influence of partisanship and ideology on the courts in the United States, they provide additional support for earlier scholarly evidence that courts are seen as different government actors from executives and legislators, and, thus, they are insulated from some of the politics in which those actors engage. On the other hand, state supreme court selection methods are varied, and they add an additional wrinkle to our understanding of state supreme court legitimacy. Elections in particular offer the potential to enhance and detract from judicial legitimacy, but to date scholars have not explored this within the context of low levels of institutional knowledge. In the next chapter, I explore respondent knowledge of state supreme courts within the context of states that elect high court judges and those that do not to observe how elections influence judicial legitimacy.
Table 4.1: Descriptions of the Variables Used in the Chapter Models

<table>
<thead>
<tr>
<th>Model Variables</th>
<th>Explanatory Variable</th>
<th>Variable Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Diffuse Support Treatment</td>
<td></td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Negative Diffuse Support Treatment</td>
<td></td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Ideological Appointee Treatment</td>
<td></td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Controversial Decision Treatment</td>
<td></td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Support for Democratic Values</td>
<td></td>
<td>Index of supportive answers to questions gauging support for democratic values</td>
</tr>
<tr>
<td>Supreme Court Knowledge</td>
<td></td>
<td>Number of questions respondent answers correctly about the United States Supreme Court</td>
</tr>
<tr>
<td>State Supreme Court Knowledge</td>
<td></td>
<td>Number of questions respondent answers correctly about their state supreme court</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td>1 if no high school diploma</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 if high school graduate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 if some college</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 if trade/technical/vocational training</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 if associate’s degree</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 if bachelor’s degree</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7 if master’s degree</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8 if professional degree</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9 if doctoral degree</td>
</tr>
<tr>
<td>Ideology</td>
<td></td>
<td>1 if very liberal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 if somewhat liberal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 if moderate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 if somewhat conservative</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 if very conservative</td>
</tr>
<tr>
<td>Political Party</td>
<td></td>
<td>1 if Democrat</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 if Independent/Other</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 if Republican</td>
</tr>
<tr>
<td>Obama Support Thermometer</td>
<td></td>
<td>0-100 scale of support where 0 is coldest and 100 is warmest</td>
</tr>
<tr>
<td>Trump Support Thermometer</td>
<td></td>
<td>0-100 scale of support where 0 is coldest and 100 is warmest</td>
</tr>
<tr>
<td>Woman</td>
<td></td>
<td>0 if male</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 if female</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td>1 if &lt;18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 if 18-29</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 if 30-39</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 if 40-49</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 if 50-59</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 if 60 and up</td>
</tr>
<tr>
<td>White</td>
<td></td>
<td>0 if they report another race</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 if the respondent is white</td>
</tr>
</tbody>
</table>
Table 4.2: Results of the Full Model

<table>
<thead>
<tr>
<th>Full Model</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Explanatory Variable</strong></td>
<td><strong>Full Model</strong></td>
<td><strong>0.0107</strong></td>
</tr>
<tr>
<td>Positive Diffuse Support Treatment</td>
<td>0.0107</td>
<td>(0.0318)</td>
</tr>
<tr>
<td>Negative Diffuse Support Treatment</td>
<td>-0.0806*</td>
<td>(0.0301)</td>
</tr>
<tr>
<td>Ideological Appointee Treatment</td>
<td>-0.0336</td>
<td>(0.0304)</td>
</tr>
<tr>
<td>Controversial Decision Treatment</td>
<td>-0.0060</td>
<td>(0.0320)</td>
</tr>
<tr>
<td>Support for Democratic Values</td>
<td>0.0488*</td>
<td>(0.0063)</td>
</tr>
<tr>
<td>Supreme Court Knowledge</td>
<td>0.0457*</td>
<td>(0.0124)</td>
</tr>
<tr>
<td>State Supreme Court Knowledge</td>
<td>-0.0084</td>
<td>(0.0154)</td>
</tr>
<tr>
<td>Education</td>
<td>0.0297*</td>
<td>(0.0056)</td>
</tr>
<tr>
<td>Ideology</td>
<td>-0.0110</td>
<td>(0.0129)</td>
</tr>
<tr>
<td>Political Party</td>
<td>0.0173</td>
<td>(0.0196)</td>
</tr>
<tr>
<td>Obama Support Thermometer</td>
<td>0.0007</td>
<td>(0.0005)</td>
</tr>
<tr>
<td>Trump Support Thermometer</td>
<td>0.0005</td>
<td>(0.0005)</td>
</tr>
<tr>
<td>Woman</td>
<td>-0.0487*</td>
<td>(0.0200)</td>
</tr>
<tr>
<td>Age</td>
<td>0.0289*</td>
<td>(0.0091)</td>
</tr>
<tr>
<td>White</td>
<td>0.0101</td>
<td>(0.0256)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.1730*</td>
<td>(0.0718)</td>
</tr>
<tr>
<td>N</td>
<td>673</td>
<td></td>
</tr>
<tr>
<td>R-squared</td>
<td>0.226</td>
<td></td>
</tr>
</tbody>
</table>

* p<0.05

OLS estimation with robust standard errors in parentheses. I predict a connection between the Supreme Court acting as a heuristic to inform state court legitimacy. Hypothesized null results are highlighted in light gray, while the hypothesized negative result is highlighted in dark gray.
Table 4.3: Results of the Full Model Subset by Respondent Knowledge

<table>
<thead>
<tr>
<th>Explanatory Variable</th>
<th>Respondents with Low State Supreme Court Knowledge</th>
<th>Respondents with Higher State Supreme Court Knowledge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Diffuse Support Treatment</td>
<td>0.0106 (0.0439)</td>
<td>-0.0064 (0.0499)</td>
</tr>
<tr>
<td>Negative Diffuse Support Treatment</td>
<td>-0.0763* (0.0378)</td>
<td>-0.0956 (0.0518)</td>
</tr>
<tr>
<td>Ideological Appointee Treatment</td>
<td>-0.0030 (0.0381)</td>
<td>-0.0871 (0.0515)</td>
</tr>
<tr>
<td>Controversial Decision Treatment</td>
<td>0.0253 (0.0405)</td>
<td>-0.0762 (0.0545)</td>
</tr>
<tr>
<td>Support for Democratic Values</td>
<td>0.0322* (0.0086)</td>
<td>0.0688* (0.0090)</td>
</tr>
<tr>
<td>Supreme Court Knowledge</td>
<td>0.0629* (0.0177)</td>
<td>0.0240 (0.0179)</td>
</tr>
<tr>
<td>Education</td>
<td>0.0344* (0.0076)</td>
<td>0.0262* (0.0086)</td>
</tr>
<tr>
<td>Ideology</td>
<td>0.0036 (0.0187)</td>
<td>-0.0292 (0.0183)</td>
</tr>
<tr>
<td>Political Party</td>
<td>-0.0020 (0.0259)</td>
<td>0.0368 (0.0310)</td>
</tr>
<tr>
<td>Obama Support Thermometer</td>
<td>0.0006 (0.0006)</td>
<td>0.0007 (0.0007)</td>
</tr>
<tr>
<td>Trump Support Thermometer</td>
<td>0.0002 (0.0007)</td>
<td>0.0006 (0.0007)</td>
</tr>
<tr>
<td>Woman</td>
<td>-0.0253 (0.0266)</td>
<td>-0.0786* (0.0310)</td>
</tr>
<tr>
<td>Age</td>
<td>0.0307* (0.0124)</td>
<td>0.0241* (0.0140)</td>
</tr>
<tr>
<td>White</td>
<td>0.0207 (0.0356)</td>
<td>0.0022 (0.0365)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.173* (0.100)</td>
<td>-0.129 (0.109)</td>
</tr>
<tr>
<td>N</td>
<td>397</td>
<td>276</td>
</tr>
<tr>
<td>R-Squared</td>
<td>0.212</td>
<td>0.280</td>
</tr>
</tbody>
</table>

* p<0.05

OLS estimation with robust standard errors in parentheses. I predict a connection between the Supreme Court acting as a heuristic to inform state court legitimacy. Hypothesized null results are highlighted in light gray, while the hypothesized negative result is highlighted in dark gray.
CHAPTER 5

JUDICIAL ELECTIONS, INDIVIDUAL IGNORANCE, AND STATE SUPREME COURT LEGITIMACY

Thus far, this dissertation explores state supreme court legitimacy without directly testing the influence of elections on judicial support. The diverse selection methods used by the 50 American states is the focal point of scholarly debate concerning the influence of elections on state court legitimacy. Broadly speaking, there are two schools of thought. Some legal thinkers outside of political science focus on the potential problems with electing judges: namely, the increase in possibility of corruption and, absent that, the perception of corruption by citizens. No less a legal mind than former Supreme Court Justice Sandra Day O’Connor fights against what she sees as the scourge of judicial elections done poorly (O’Connor 2010). She argues, in part:

Each state has its own method of choosing judges, from lifetime appointments to partisan elections. But judges with a lifetime appointment are not accountable to voters. And elected judges are susceptible to influence by political or ideological constituencies.

A better system is one that strikes a balance between lifetime appointment and partisan election by providing for the open, public nomination and appointment of judges, followed in due course by a standardized judicial performance evaluation and, finally, a yes/no vote in which citizens either approve the judge or vote him out. This kind of merit selection system—now used in some form in two-thirds of

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68 I follow the lead of other judicial scholars and use diffuse support, judicial legitimacy, institutional loyalty, and institutional support interchangeably. See Gibson 2012, 183.
states—protects the impartiality of the judiciary without sacrificing accountability…

State courts resolve the most important legal matters in our lives, including child custody cases, settlement of estates, business-contract disputes, traffic offenses, drunken-driving charges, most criminal offenses and most foreclosures. More than 100 million cases are filed in state courts each year.

When you enter one of these courtrooms, the last thing you want to worry about is whether the judge is more accountable to a campaign contributor or an ideological group than to the law.

In our system, the judiciary, unlike the legislative and the executive branches, is supposed to answer only to the law and the Constitution. Courts are supposed to be the one safe place where every citizen can receive a fair hearing (O’Connor 2010).

O’Connor’s argument is one that drives to the very heart of judicial legitimacy.

The judicial scholarship indicates that the unique status judges hold in the minds of the public contributes mightily to judicial legitimacy. However, elections and their associated campaigns include the potential for behavior that might call judicial fairness into question. However, political science scholarship reveals that while there are certain risks to holding judicial elections, broadly speaking, they allow for greater legitimacy because citizens appreciate access to voting as an accountability tool. Rather than hurting legitimacy, scholars find evidence that, even in states with elections performed outside of a merit system model that O’Connor references, elections possess the capacity to enhance judicial legitimacy. However, this debate, and the literature that engages with it, overlook the primary element of judicial legitimacy this dissertation seeks to explore: the enormous dearth of knowledge among citizens about state supreme courts.

In this dissertation, I argue that the study of state court legitimacy is incomplete
without more direct accounting for judicial ignorance among the public. Elections serve to muddle this accounting. In the previous chapters, I theorize and provide evidence that shows respondents with low levels of knowledge about their state supreme court are more likely to rely on the United States Supreme Court as a cue. This cue acts as a guide about whether they should confer legitimacy on state high courts about which they are far less knowledgeable. However, elections act in part as exercises in educating voters about both the candidates and the offices those candidates seek through campaigns. This campaign-education process may influence respondents who otherwise fail to answer any state supreme court knowledge question correctly in my survey. Campaigns and the accompanying educational benefits may help some respondents with low knowledge of state supreme courts to distinguish their state high court from the United States Supreme Court as well as provide enough information to confer legitimacy on their state high court independent of their thoughts about the Supreme Court. To test the influence of elections in this chapter, I develop and test a theory of state supreme court legitimacy that builds on the evidence from the previous chapters and tests the degree to which respondents living in a state with a recent high court election may differ from their counterparts in states without a recent election. First, I turn to the literature on judicial elections and the lack of attention to date on the widespread dearth of knowledge citizens and voters possess about their state supreme courts.

**State Supreme Court Elections**

Much of the scholarly work on state supreme court elections and legitimacy seeks to understand whether the influence of elections on state supreme court legitimacy is harmful, helpful, or non-existent. In particular, campaign advertising receives much
attention, particularly because this behavior falls so far outside of the norm of typical judicial behavior. Gibson (2012) reports that elections in Kentucky reinforce the legitimacy of the court, but campaign ads that respondents find objectionable are harmful to court support.69 Pennsylvania elections reveal a similar story, where politicized ads, whether traditional or strong attack ads, harm legitimacy even within the context of the legitimacy-enhancing influence of the election (Gibson et al. 2011). Bonneau, Hall, and Streb (2011b) find a similar results in their study of the influence of Republican Party of Minnesota v. White (2002) on judicial elections, finding that the loosening of campaign restrictions on judicial candidates does not negatively influence judicial support.

However, Gibson and Caldeira (2012) report that, in West Virginia, campaign contributions have the potential to harm legitimacy, depending on the source of the funds, even if the candidate later rejects the contribution. Taking a broader approach, in a study done with a national survey, Gibson finds campaign contributions to be harmful to judicial legitimacy while politicized attack ads and discussions of policy were not (2009). These findings indicate a complex set of factors that influences state supreme court legitimacy when the high court judges are selected by elections. While these studies do much to inform how legitimacy and elections interact, much of the literature on judicial elections does not focus as much on how the process of campaigning and voting influence legitimacy.

Rather, much of the judicial election scholarship focuses more on the mechanics of judicial elections, with a focus on campaign finance and success or failure of

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69 These may include ads that Gibson characterizes as negative, partisan, or unfair. On the whole, Gibson finds that, in Kentucky, the positive influence of elections outweighs the negative influence of these types of ads.
incumbents. State supreme court elections attract more challengers and donations than in the past (Bonneau 2004), not unlike rising contribution levels to other types of campaigns over time. This increase in financial contributions has led some states to increase regulations of judicial elections, though some of these attempts at regulation do not always work as intended. Bonneau and Cann (2011a) find that campaign spending limits intended to support the courts by limiting the ability of candidates to behave in ways similar to other politicized actors also serves to limit the success of candidates who challenge incumbent judges. Elections appear to aid judicial legitimacy by providing a tool for citizens to hold judges accountable, but if elections are not competitive, they may act as a counternarrative in the minds of the public.

Scholars find that the amount of campaign spending is also a factor of electoral and judicial context (Bonneau 2005b), judicial candidates raise money in ways similar to other electoral actors (Bonneau 2007), challenger success as a percentage of the vote is partially a result of how much money they can raise (Bonneau 2007), and this spending has the capacity to increase turnout among the electorate (Hall and Bonneau 2008). Further, the evidence indicates that negative ads increase voter participation in elections, a “striking” similarity to other non-judicial state elections (Hall and Bonneau 2013, 115). Much of this work indicates that judges are engaging in some degree of risky electoral behavior if they desire to maintain judicial legitimacy. In particular, the findings that money is so closely tied to electoral success and that candidates raise money in similar ways to other actors indicate a troubling potential for scandals that may harm legitimacy, even as the election and voting process boosts support for courts. This potentially harmful
similarity between judicial and other more traditionally politicized non-judicial campaigns is well-documented.

Much of literature illuminating similarities between judicial and non-judicial elections focuses on the success or failure of incumbent judges. Competition for incumbents and challengers is predictable based upon several factors including whether this is the judge’s first term, the salary, the length of term, the pool of attorneys in the state, and partisan competition. The presence of any of these indicators increase the likelihood of a challenge (Bonneau and Hall 2003). Incumbent defeats are also predictable, due in large part to the quality of challengers with more experience and greater qualifications (Hall and Bonneau 2006b) as well as the institutional rules governing selection process and the electoral context found in any given state (Bonneau 2005a). Candidate experience is important in open elections as well, as are the institutional rules governing selection and the state’s electoral environment broadly (Bonneau 2006). 70

More specifically, partisan elections do a better job at increasing voter attention and turnout than nonpartisan elections (Hall 2007b), and voters will look for other party cues if the election is nonpartisan so they may make what they perceive as an informed decision (Bonneau and Cann 2015). 71 Additionally, judges who compete in an election are aware of the realities this process requires and that greater fundraising increases attention and voter turnout (Brace and Boyea 2008). Further, an incumbent judge is more likely to vote in ways that are more closely aligned with their constituents as an election

70 An open election in this context is referring to a race for an office without an incumbent.
71 The media relies on this as well. In the 2016 North Carolina non-partisan state supreme court election, the News and Observer headline the day after the election read “Mike Morgan’s rare big win for Democrats tilts party balance on NC Supreme Court” (Blythe and Bonner 2016).
approaches, even if the judge’s personal preferences and previous voting record diverge from the preferences of voters (Hall 1992). Given that much of the legitimacy literature indicates that a primary source of court support is the difference people maintain in their minds separating the courts from other politicized institutions, the findings in this literature point to some potential for trouble. However, taken as a whole, this scholarship indicates that judicial elections increase attention from voters. It follows that, at least during the campaign season, voters are more likely to possess greater knowledge of their state supreme courts, relative to their counterparts in states without elections. Given that, the increase in knowledge should appear in a survey of voters and non-voters alike when comparing states with judicial elections to states without judicial elections.

The scholarship on judicial elections largely focuses on campaigns, fundraising, and incumbent versus challenger dynamics, with a comparatively smaller focus on the influence of these factors on judicial legitimacy. Even in the studies of judicial elections that specifically examine judicial legitimacy, however, I argue that scholars fail to adequately address an important element of state supreme court elections and judges. These studies do good work examining the mechanics of judicial elections broadly and the influence of campaign activities on judicial elections specifically. However, to fully understand the influence of judicial elections on the court’s legitimacy, I argue that it is necessary to develop a better understanding of the ways in which citizen ignorance interacts with judicial elections and campaigns. In previous chapters of this dissertation, I present evidence that knowledge of state supreme courts is quite low across a wide variety of demographic measures. Additionally, respondents with low state high court knowledge rely on the Supreme Court to act as a cue that informs whether they extend
legitimacy to their state supreme court. However, up until this point, this dissertation does not address how elections influence citizen knowledge. To more directly test how lack of state high court knowledge interacts with elections for the purposes of conferring judicial legitimacy, I return to the Elected Judge Hypothesis I detailed at greater length in the theory chapter:

**Elected Judge Hypothesis:** Citizens in states that elect judges are more likely to have knowledge of their state supreme court and thus less likely to rely on the Supreme Court as a cue for conferring legitimacy on state supreme courts than citizens in states that do not elect judges.

With this hypothesis, I am interested in two primary questions. The first is whether respondents in the survey living in states with judicial elections know more about their state supreme courts than those living in states without judicial elections. The evidence I provide in Chapter Three indicates fairly widespread ignorance of state supreme courts across demographic variables. However, the influence of elections and campaigns on citizen knowledge is mixed. Scholars find that campaigns and associated media increase citizen knowledge (Chaffee and Frank 1996; Zhao and Chaffee 1995), although this knowledge is imperfect (Koch 2008). Direct media by campaigns is not as successful as traditional media at improving knowledge, but it may improve participation (Dimitrova et al. 2014). The survey for this project is in the field in December 2016 and January 2017, providing a useful way to test the first clause of this hypothesis by testing states with a recent election versus those without one.

However, given the lack of knowledge citizens possess about their state supreme courts, merely living in a state that elects judges may not improve citizen knowledge
absent a campaign to learn and reinforce what people know. The survey also makes it possible to test states that recently held an election in 2016 versus those that did not. The second clause of the hypothesis focuses on the larger scope of this dissertation and the role the Supreme Court plays. I find evidence that the Supreme Court does act as a cue, broadly speaking, among the respondents in the full survey with low levels of knowledge. In this chapter, I seek to answer whether elections act in a way that alters this reliance on the Supreme Court as a heuristic for those respondents with lower levels of court knowledge. I turn next to the test of the Elected Judge Hypothesis using the survey data I collected.

**The Interplay of Knowledge, Elections, and State Supreme Court Legitimacy**

Since my survey is in the field in the months immediately following the 2016 presidential election, this provides an opportunity to examine the influence of elections on knowledge. Respondents are subset based on whether they live in a state that held an election in November of 2016. Ideally, a pre- and post-election survey would illuminate how elections influence knowledge more directly. However, absent that data, I anticipate the influence of elections is stronger in states with a recent election, given the temporal proximity to an election and the educational benefits that entails. Recall that respondents answer three questions about their state courts. I compiled a count variable of the number of questions survey takers answer correctly. Comparing levels of knowledge among respondents subset by the election categories I describe provides the data to answer the first clause of the hypothesis.

In an earlier chapter, I briefly discuss levels of knowledge about state supreme courts. As I report extensively in that chapter, on the whole, correct answers about state
supreme courts are quite a bit lower than for the United States Supreme Court among survey respondents. In this chapter, I seek to move beyond these more generalized data and focus in on differences that arise between states based on whether they elect judges or not. I begin this analysis with the data in Table 5.1, where I divide respondents between those who live in a state with a state supreme court election in November 2016 and those that do not.72

Here, a clear distinction emerges between the two categories. Among respondents living in states with a state supreme court election in November of 2016, 53% fail to answer even one question correctly versus 65% of respondents living in states that did not have a state high court election at that time. To put that in simpler terms, nearly half of respondents in states with a supreme court election in November 2016 fail to answer at least one knowledge question correctly compared to more than two-thirds among respondents in states without high court elections at the same time. This difference primarily occurs among respondents who answer at least one out of three questions correctly. The difference in knowledge extends further to those respondents who answer at least one question correctly. Here, 35% of respondents living in a state with a state high court election in November 2016 answer one question correctly versus only 23% among their counterparts in other states. The results among respondents who answer two or three out of three questions correctly are similar across the two categories.

These results at the crosstab level provide supporting evidence for my hypothesis that citizens living in a state with a recent high court election are likely to know more about their state supreme courts than their counterparts in states without a recent election.

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72 This includes partisan, nonpartisan, and recall elections held alongside the presidential election in November of 2016.
Based on this data, elections may increase respondent knowledge, at the very least, for some time after the election concludes. These results are supporting evidence for the first clause of my hypothesis in this chapter: citizens living in states with judicial elections appear more likely than those in states without elections to know more about their state supreme courts, based on how frequently respondents correctly answer factual questions about those courts. I turn next to the second clause of the hypothesis to seek evidence that respondents in states that elect judges are less likely to rely on the United States Supreme Court as a cue than are their counterparts in other states.

**Elections, Knowledge, and the Experimental Treatment**

In the previous chapter, I test the primary hypothesis of my theory in this dissertation: that respondents rely at least partially on their support for the Supreme Court to inform their support for state supreme courts about which they are less knowledgeable. The evidence in that chapter indicates that some respondents do, at least in part, lean on their support for the Supreme Court to fill the knowledge gaps they have about their state supreme courts. However, as I indicate in this chapter, elections play an influential role in state court knowledge. The rest of this chapter is a direct test of the hypothesis that respondents in states with elections are likely to know more about their state supreme courts and thus less likely to rely on the Supreme Court as a cue. Citizens in states with recent judicial elections do appear to know more about their state supreme courts than their counterparts in states without an election in November of 2016. While the difference is not dramatic, it may indicate that there is greater awareness of state supreme courts in those states with recent elections, and that awareness may spread even to respondents who answer zero questions correctly. I turn next to a description of the data I rely on for
this test before turning to the results.

I survey respondents on Amazon’s Mechanical Turk. The model I use is similar to that in previous studies of court legitimacy. I rely on ordinary least squares regression analysis to measure various influences on a summated index of questions to assess a respondent’s loyalty to a court as the dependent variable. I follow the lead of previous scholars (Bartels and Johnston 2013; Gibson 2012) who provide a measure of judicial legitimacy that captures diffuse support rather than specific support. The dependent variable is a measure of loyalty to state supreme courts. Respondents receive the following statements to which they may strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree:

1. If the supreme court of my state started making a lot of decisions that most people disagree with, it might be better to do away with the supreme court of my state altogether.
2. The supreme court of my state should be listened to, even if I disagree with the ruling.
3. The right of my state supreme court to decide certain types of controversial issues should be reduced.
4. The supreme court of my state can usually be trusted to make decisions that are right for the state as a whole.
5. Judges of the supreme court of my state who routinely make decisions at odds with the majority of the people of my state should be removed from office.
6. The supreme court of my state ought to be made less independent so that it listens a lot more to what the people want.
7. There should be stronger controls in place to prevent the supreme court of my state from becoming involved in politics.
8. The supreme court of my state gets too mixed up in politics.
9. The supreme court of my state may have ideas about what the constitution means, but it is more important what the majority of the people think the constitution means.

After removing question number four, which deals with trusting the court (see

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73 I fully detail the data collection process in the theory chapter.
74 Bolded text is in the survey instrument to emphasize that the statements are about state supreme courts and not the United States Supreme Court.
footnote), Common Factor Analysis reveals a unidimensional structure with an
eigenvalue of 2.18.\textsuperscript{75,76} Given the unidimensional nature factor analysis reveals, I rely on
the summated eight question index to measure institutional loyalty that serves as the
dependent variable. The correlation between the factor score and summated index of
eight questions without the trust question is .99.

Some previous research on court legitimacy excludes the non-attentive public
from analyses of judicial legitimacy (Gibson 2012; Gibson and Caldeira 2003). However,
since I am specifically interested in the ways in which respondents overcome their
ignorance of state supreme courts when conferring legitimacy and since this is not a study
of the influence of any specific campaign activities, I do not separate out the non-
attentive public. I code responses so that they indicate support for or against the court.\textsuperscript{77} I
then create a variable that adds the number of supportive responses for the eight-
statement set excluding the trust statement. To make the analysis as simple and direct as
possible, the dependent variable is the summated index of support for the eight
statements. In other words, the variable is an index of the number of times each
respondent supports the court. I next turn to the explanatory variables and what the theory
indicates their influence might be.

\textit{Treatment Variables}

The primary independent variables that test the influence of the Supreme Court as

\textsuperscript{75} There is evidence the trust statement (statement 4) is capturing specific support rather than diffuse
support. Since scholars are still debating whether to include it, I also include it in the survey. However, in
the final analysis, I drop it because the case against including it is strong. However, excluding the question
from the index of support does not significantly alter the findings in any considerable way. See Gibson’s
(2011) article for further explanation.

\textsuperscript{76} The eigenvalue of the second extracted factor is .50.

\textsuperscript{77} I code an answer of neither agree nor disagree as not supporting the court.
a cue are the five treatment variables. Each respondent randomly receives either one of the four treatments or no treatment. Two of the treatments attempt to trigger thoughts about diffuse support for the United States Supreme Court and cast it as worthy of diffuse support or unworthy. Those variables are labeled Positive Diffuse Support Treatment, and Negative Diffuse Support Treatment. The other two treatments attempt to trigger thoughts of specific support for the United States Supreme Court, focusing on a controversial decision about abortion and an ideological appointee to the Supreme Court. I code the variables as 1 if the respondent receives the particular treatment, or lack of treatment, and 0 otherwise. I omit the no treatment variable from the analysis to serve as a baseline for comparison. I expect that the only treatment with a statistically significant influence is the Negative Diffuse Support Treatment variable among respondents with low levels of state supreme court knowledge in states that do not elect judges. I expect the influence on the dependent variable to be negative. However, I expect that the Negative Diffuse Treatment is not a statistically significant influence on state high court legitimacy among respondents with low levels of knowledge living in states that elect judges. Further, I expect that none of the treatments are significant predictors of court support among respondents with higher levels of state supreme court knowledge. Theoretically, I expect the election process to influence enough respondents so that, while they may not be able to answer knowledge questions, they are likely more familiar with their state supreme courts than their counterparts in states without a recent election. This familiarity is likely to manifest indirectly by a lack of reliance on the Supreme Court as a cue to confer legitimacy.

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78 The treatment language respondents receive is available in the appendix.
Democratic Values

In previous research of judicial legitimacy, support for democratic values emerges as a strong predictor of court support. To measure support for democratic values, I include questions that measure political tolerance of minority opinions, support for the rule of law, and liberty over order.79 I code each response as either supportive or not supportive of the particular value in question. In previous works using these types of variables, it is sometimes possible to construct three variables of support for democratic values using summated indexes of the responses. However, the results indicate that none of the indexes load onto a single factor when constructed as counts of variables meant to measure support for the democratic values of rule of law, liberty over order, and support for minority. However, factor analysis reveals a single factor combining all of the democratic values variables with an eigenvalue of 1.24. Unfortunately, not all of the variables load on it.80 The correlation between the summated index of democratic values and the factor score is .83. However, this is a closer approximation to a unidimensional result than the separate index variables that seek to measure. Thus, while I cannot say with full reliability that the variable captures a single dimension, it is closer to doing so

79 See the appendix for the questions respondents receive about democratic values. The questions are borrowed from Gibson’s (2006) work on state supreme court legitimacy in Kentucky and are available in the appendix.
80 The eigenvalue of the second factor is .64. Two survey items in the index of support for democratic values do not load on the first factor: question two and question four. Question two asks, “it is not necessary to obey a law you consider unjust,” with a factor loading of -.047. Question four asks, “sometimes it might be better to ignore the law and solve problems immediately than wait for a legal solution,” with a factor loading of -.038. Given the way these items are worded, it may have appeared a bit ambiguous to some respondents as to which answer is more supportive of democratic values, which may lead to the items not loading on the first factor. Additionally, even though they do not load, their negative factor scores are very low. Running the model with the individual items as predictors coded either as supportive of democratic values or not reveals results that are complex and difficult to interpret with much certainty given the theoretical foundations of this model. Given the greater simplicity inherent in relying on an index as a predictor as well as how low the negative factor loadings of the items that do not load on the first factor are, I rely on the index as a simpler, if imperfect, measure of support for democratic values.
than the other variables, and I rely on it in the analysis. Since support for democratic values is usually a strong predictor of state court support, including this variable in the model makes it a more robust test of my theory.

_Court Knowledge and Education_

Beyond democratic values, two additional variables are frequently influential in judicial legitimacy scholarship: education and knowledge of the courts.\(^1\) For this analysis, I separate out those whose results indicate no knowledge of state courts from those who have some knowledge. To measure this, respondents receive three questions about state supreme courts and four questions about the Supreme Court. I code them as answering them correctly or incorrectly.\(^2\) I add together the number of correct answers for each to create count variables of Supreme Court knowledge and state supreme court knowledge. For the test of my theory, I divide those who answer zero questions correctly about state supreme courts from those who answer one or more questions correctly.\(^3,4\) I code education from less than high school diploma to doctorate. This allows for an interpretation of a coefficient as a response to increasing education. I expect the democratic values variable as well as the education variable to report positive statistically significant coefficients. Additionally, I expect knowledge of the Supreme Court to have a positive and significant influence among citizens with low knowledge about their state supreme court.

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\(^1\) Previous measures of court knowledge focus on basic facts about courts including the selection process for judges as well as term length. I follow suit in this study.

\(^2\) Survey questions are available in the index.

\(^3\) When I refer in this dissertation to citizens with low levels of knowledge about state supreme courts, I refer to those who answer zero factual questions correctly about those institutions.

\(^4\) I divide the respondents here as close to the median as I can. Nearly 59% (N= 397 out of 673) of respondents answer zero knowledge questions about their state supreme court correctly.
Measures of Partisanship

The scholarly debate about the influence of partisanship and ideology on judicial legitimacy generally suggests that these factors do not influence judicial legitimacy. However, I include them in this analysis to see if there are any unexpected partisan influences. I code party as 1 for Democrats, 2 for Independents, and 3 for Republicans so that any change in the regression coefficients results from respondents becoming more Republican. I follow this logic as I code ideology as well so that any coefficient result indicates movement as respondents shift from very liberal to very conservative. Additionally, the survey results come from December of 2016 and January of 2017, and given that time frame, I include feeling thermometers about President Obama and then President-elect Trump. I ask respondents to rank how warmly they feel about either person on a scale of 0 to 100, where 0 is very cold and 100 is very warm. Since my study focuses on those with the least amount of state supreme court knowledge, I include these thermometer variables because they are less abstract than partisanship or ideology and may reveal an unexpected influence of partisanship on support for state supreme courts.

Demographic Variables

I include the demographic variables of age, gender, and race. I code the age variable categorically in roughly 10-year age ranges from 18 and above. I code gender as 0 for male and 1 for female and label the variable Woman. I include a dummy variable for white respondents. The baseline for comparison of race is non-white respondents.

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85 See Bartels and Johnson (2013) for evidence that partisanship does play a role. However, much of the scholarship does not support their finding (Gibson and Nelson 2017; Gibson 2012; Gibson 2008).

86 The original survey instrument includes a category for younger than 18 as a way to reject respondents who do not meet the official criteria. While there are zero respondents in the age category of younger than 18, I leave it in the data because it was in the original survey instrument.
This is primarily because of the very small N of some racial minorities once the sample is subset into different categories. I do not expect the demographic variables to influence support for state supreme courts in this model. I include a brief description of the explanatory variables in Table 5.2.

Before I turn to analyze the influence of living in a state that elects judges on respondent support for state supreme courts, I first briefly turn to see if there are discernable differences in support for state supreme courts across states that elect judges and those that do not. While the primary focus of this research is not on how strongly respondents support the court, but rather on what influences their support, it is useful to understand where respondent’s support for the court is after receiving any treatments they may have randomly been assigned. The results are in Table 5.3. Generally speaking, across the four categories, support for the court is relatively stable among respondents, with means and standard deviations that are roughly similar. This is evidence that, while there is some movement within models based on the explanatory factors I test, on the whole, support for the state supreme court is fairly stable across various subsets, perhaps with slightly higher support among respondents in states with a 2016 judicial election. However, this is weak support of previous scholarship that finds evidence that elections are a positive influence on state high court legitimacy.

In Table 5.4, I start this analysis with respondents who answer zero state supreme court knowledge questions correctly and subset them by whether they live in a state with a judicial election in November of 2016 or not.\footnote{Several states held judicial elections in 2016 before November, but I am only interested in the November elections given their proximity to when the survey is in the field. I argue that focusing only on elections that occur two months prior to the survey in the field provides a more direct test of this electoral influence.} I first draw your attention to the top
four variables in the table that measure exposure to the survey treatments. As my hypothesis predicts, the only treatment that is statistically significant attempts to call into question the diffuse support for the Supreme Court. This treatment negatively focusing on the Supreme Court appears harmful to state supreme court legitimacy, but only among respondents with low state court knowledge living in states without a judicial election in 2016. Among similar low-knowledge respondents in states with a judicial election in November 2016, the same treatment is not a significant predictor of legitimacy. Further supporting this, Supreme Court knowledge is a positive predictor of state supreme court legitimacy among low-knowledge respondents in states without a 2016 election, but this influence disappears for similar respondents living in states with an election at the same time.

These results are reasonably strong support for the Elected Judge Hypothesis. If state supreme courts operate in the minds of respondents as distinct institutions when deciding whether to confer legitimacy or not, then neither knowledge of the Supreme Court nor any treatments focusing on the Supreme Court should influence state high court support. Here, there is evidence that the Supreme Court does play a role in state court support, but recent judicial elections may mitigate that. I briefly go beyond the data for a moment to discuss why this result might appear. The process of elections and campaigns serves to educate voters about a choice at the polls while simultaneously making people aware of institutions they do not spend a great deal of time thinking about. While respondents living in states with 2016 high court elections in this survey may not know answers to the specific types of knowledge questions I ask, they may be more aware of their state courts as distinct institutions with state-level players thanks to the
campaigns and increase in media attention. This, in turn, may help them distinguish between those institutions when the Supreme Court is brought to their attention in a negative light. Moving beyond the influence of the treatments and the Supreme Court, democratic values and education are both positive predictors of state court support, supporting previous legitimacy scholarship. The only other significant predictor is age in the subset of respondents in a state without an election.

While the results in Table 5.4 are partial support for the Elected Judge Hypothesis, I also look at respondents who answer one or more state supreme court knowledge questions correctly and subset them by whether they live in a state with a 2016 high court election or not. The results are in Table 5.5. Again, I draw your attention to the treatment variables at the top of the table. Among respondents with high levels of state court knowledge, none of the treatments are a statistically significant predictor, as my hypothesis predicts. Additionally of note, Supreme Court knowledge is never a significant predictor of state supreme court support, unlike for respondents with low levels of state court knowledge. These are important results to highlight because of what they mean in light of the results from respondents with low knowledge of state supreme courts. This data suggests that the more respondents know about state supreme courts, the less likely it is that the Supreme Court may influence their support for state high courts. The presence of an election does not serve to alter the influence of the Supreme Court among respondents with higher state court knowledge, unlike their counterparts with lower state high court knowledge. Support for democratic values remains a positive predictor for both subset categories.

There are two unexpected results. First, education is not a significant predictor
among respondents with higher state court knowledge who live in a state with a 2016 high court election. Education is frequently a positive predictor of state court support in the literature, and my theory includes education as an important piece of how judicial legitimacy is conferred. This result may indicate the power of elections to raise awareness of state courts. If respondents know more about their state supreme court, and their awareness of them improves as a result of an election, this may mitigate the general positive influence of higher educational attainment, possibly indicating that they know more about their state courts than their reported level of educational attainment might suggest.

The second unusual result is among women in states with a 2016 election. They are less likely than men to support state supreme courts. This is not a result I expected, and the data alone do not offer any insights as to why this might be. Given that these are women with higher levels of state court knowledge living in states that recently held a high court election at the time of the survey, it may reflect the influences of campaigns on issues that adversely influenced diffuse support for state high courts among female respondents. Or it may be an anomaly in the data. It is impossible to say with much certainty given the data available here.

Discussion

This chapter seeks to further refine the role that knowledge of institutions plays in state supreme court legitimacy. In chapter three, I provide evidence that state supreme courts appear to be little-known entities among respondents in this survey, even as participants do much better answering knowledge questions about the United States Supreme Court. In chapter four, I provide evidence that, among respondents with low
levels of knowledge about their state high courts, the United States Supreme Court appears to inform whether they extend legitimacy to their state supreme court. In this chapter, I further refine understanding of state supreme court legitimacy by including the presence of elections in the analysis. Here, the influence of the United States Supreme Court on state high court legitimacy appears to fade for respondents with low state supreme court knowledge if they live in a state with a recent election. Put another way, respondents with low levels of state supreme court knowledge in states with recent elections are less likely to rely on the Supreme Court as a cue when conferring legitimacy on state supreme courts, unlike their less knowledgeable counterparts in states without a recent state high court election. While this result does not provide any evidence that elections either improve or harm legitimacy for state courts, it does show that elections appear to improve the degree to which state supreme courts exist as independent institutions in the minds of respondents. This is helpful for state courts that may not want to have their legal decisions linked too closely with those of a national Supreme Court that some might view in partisan terms. In the next chapter, I conclude this dissertation with final thoughts and future implications.
Table 5.1: Results of State Court Knowledge Questions Subset by Presence of Election

<table>
<thead>
<tr>
<th>Number of state court knowledge questions answered correctly</th>
<th>Percent of respondents who correctly answer the corresponding number of questions in the first column residing in states with a state high court election in 2016</th>
<th>Percent of respondents who correctly answer the corresponding number of questions in the first column residing in states without a state high court election in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>53.1%</td>
<td>64.6%</td>
</tr>
<tr>
<td>1</td>
<td>34.7%</td>
<td>23.1%</td>
</tr>
<tr>
<td>2</td>
<td>12.8%</td>
<td>11.2%</td>
</tr>
<tr>
<td>3</td>
<td>0%</td>
<td>1.2%</td>
</tr>
<tr>
<td>N= 673</td>
<td>N = 326</td>
<td>N = 347</td>
</tr>
</tbody>
</table>
Table 5.2: Descriptions of the Variables Used in the Chapter Models

<table>
<thead>
<tr>
<th>Explanatory Variable</th>
<th>Variable Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Diffuse Support Treatment</td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Negative Diffuse Support Treatment</td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Ideological Appointee Treatment</td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Controversial Decision Treatment</td>
<td>1 if they receive this treatment, 0 if otherwise</td>
</tr>
<tr>
<td>Support for Democratic Values</td>
<td>Index of supportive answers to questions gauging support for democratic values</td>
</tr>
<tr>
<td>Supreme Court Knowledge</td>
<td>Number of questions respondent answers correctly about the United States Supreme Court</td>
</tr>
<tr>
<td>State Supreme Court Knowledge</td>
<td>Number of questions respondent answers correctly about their state supreme court</td>
</tr>
<tr>
<td>Education</td>
<td>1 if no high school diploma 2 if high school graduate 3 if some college 4 if trade/technical/vocational training 5 if associate’s degree 6 if bachelor’s degree 7 if master’s degree 8 if professional degree 9 if doctoral degree</td>
</tr>
<tr>
<td>Ideology</td>
<td>1 if very liberal 2 if somewhat liberal 3 if moderate 4 if somewhat conservative 5 if very conservative</td>
</tr>
<tr>
<td>Political Party</td>
<td>1 if Democrat 2 if Independent/Other 3 if Republican</td>
</tr>
<tr>
<td>Obama Support Thermometer</td>
<td>0-100 scale of support where 0 is coldest and 100 is warmest</td>
</tr>
<tr>
<td>Trump Support Thermometer</td>
<td>0-100 scale of support where 0 is coldest and 100 is warmest</td>
</tr>
<tr>
<td>Woman</td>
<td>0 if male 1 if female</td>
</tr>
<tr>
<td>Age</td>
<td>1 if &lt;18 2 if 18-29 3 if 30-39 4 if 40-49 5 if 50-59 6 if 60 and up</td>
</tr>
<tr>
<td>White</td>
<td>0 if they report another race 1 if the respondent is white</td>
</tr>
</tbody>
</table>
Table 5.3: Mean Levels of Court Support Subset by Presence of Election

<table>
<thead>
<tr>
<th>Support for State Supreme Courts</th>
<th>Respondents in state with 2016 election</th>
<th>Respondents in state without 2016 election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean Institutional Support</td>
<td>3.56 (2.31)</td>
<td>3.45 (2.24)</td>
</tr>
<tr>
<td>N=326</td>
<td>N=347</td>
<td></td>
</tr>
</tbody>
</table>
Table 5.4: Full Model Subset by Low Knowledge and Election

<table>
<thead>
<tr>
<th>Explanatory Variable</th>
<th>Respondents Living in States with a 2016 Judicial Election</th>
<th>Respondents Living in States without a 2016 Judicial Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Diffuse Support Treatment</td>
<td>-0.0119</td>
<td>0.0107</td>
</tr>
<tr>
<td></td>
<td>(0.0690)</td>
<td>(0.0576)</td>
</tr>
<tr>
<td>Negative Diffuse Support Treatment</td>
<td>-0.0176</td>
<td>-0.125*</td>
</tr>
<tr>
<td></td>
<td>(0.0611)</td>
<td>(0.0515)</td>
</tr>
<tr>
<td>Ideological Appointee Treatment</td>
<td>0.0649</td>
<td>-0.0362</td>
</tr>
<tr>
<td></td>
<td>(0.0648)</td>
<td>(0.0483)</td>
</tr>
<tr>
<td>Controversial Decision Treatment</td>
<td>0.0629</td>
<td>0.00545</td>
</tr>
<tr>
<td></td>
<td>(0.0689)</td>
<td>(0.0500)</td>
</tr>
<tr>
<td>Support for Democratic Values</td>
<td>0.0396*</td>
<td>0.0278*</td>
</tr>
<tr>
<td></td>
<td>(0.0147)</td>
<td>(0.0101)</td>
</tr>
<tr>
<td>Supreme Court Knowledge</td>
<td>0.0390</td>
<td>0.0758*</td>
</tr>
<tr>
<td></td>
<td>(0.0280)</td>
<td>(0.0237)</td>
</tr>
<tr>
<td>Education</td>
<td>0.0322*</td>
<td>0.0345*</td>
</tr>
<tr>
<td></td>
<td>(0.0120)</td>
<td>(0.0101)</td>
</tr>
<tr>
<td>Ideology</td>
<td>0.0284</td>
<td>-0.0208</td>
</tr>
<tr>
<td></td>
<td>(0.0329)</td>
<td>(0.0215)</td>
</tr>
<tr>
<td>Political Party</td>
<td>-0.0524</td>
<td>0.0275</td>
</tr>
<tr>
<td></td>
<td>(0.0387)</td>
<td>(0.0353)</td>
</tr>
<tr>
<td>Obama Support Thermometer</td>
<td>0.0016</td>
<td>-0.0005</td>
</tr>
<tr>
<td></td>
<td>(0.0008)</td>
<td>(0.0009)</td>
</tr>
<tr>
<td>Trump Support Thermometer</td>
<td>0.0012</td>
<td>-0.0004</td>
</tr>
<tr>
<td></td>
<td>(0.0012)</td>
<td>(0.0009)</td>
</tr>
<tr>
<td>Woman</td>
<td>-0.0004</td>
<td>-0.0536</td>
</tr>
<tr>
<td></td>
<td>(0.0416)</td>
<td>(0.0345)</td>
</tr>
<tr>
<td>Age</td>
<td>0.0245</td>
<td>0.0375*</td>
</tr>
<tr>
<td></td>
<td>(0.0180)</td>
<td>(0.0170)</td>
</tr>
<tr>
<td>White</td>
<td>0.0581</td>
<td>-0.0179</td>
</tr>
<tr>
<td></td>
<td>(0.0723)</td>
<td>(0.0418)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.2770*</td>
<td>-0.0429</td>
</tr>
<tr>
<td></td>
<td>(0.1570)</td>
<td>(0.1370)</td>
</tr>
<tr>
<td>N</td>
<td>173</td>
<td>224</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.240</td>
<td>0.253</td>
</tr>
</tbody>
</table>

* p<0.05

OLS estimation with robust standard errors in parentheses. I predict a connection between the Supreme Court acting as a heuristic to inform state court legitimacy. Hypothesized null results are highlighted in light gray, while the hypothesized negative result is highlighted in dark gray.
Table 5.5: Full Model Subset by Higher Knowledge and Election

<table>
<thead>
<tr>
<th>Explanatory Variable</th>
<th>Respondents Living in States with a 2016 Judicial Election</th>
<th>Respondents Living in States without a 2016 Judicial Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Diffuse Support Treatment</td>
<td>-0.0515</td>
<td>0.0947</td>
</tr>
<tr>
<td></td>
<td>(0.0682)</td>
<td>(0.0747)</td>
</tr>
<tr>
<td>Negative Diffuse Support Treatment</td>
<td>-0.1240</td>
<td>-0.0238</td>
</tr>
<tr>
<td></td>
<td>(0.0730)</td>
<td>(0.0727)</td>
</tr>
<tr>
<td>Ideological Appointee Treatment</td>
<td>-0.1230</td>
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* p<0.05

OLS estimation with robust standard errors in parentheses. I predict a connection between the Supreme Court acting as a heuristic to inform state court legitimacy. Hypothesized null results are highlighted in light gray.
CHAPTER 6

CONCLUSIONS AND IMPLICATIONS

In embarking on this project, I set out to begin grappling with a puzzle scholars have thus far largely ignored or only dealt with indirectly. Succinctly, how do individuals confer legitimacy upon institutions of which they are largely ignorant? Scholarship on legitimacy focuses heavily on the Supreme Court, where a large percentage of individuals are at least somewhat knowledgeable about the institution. From this body of scholarship, it appears that judicial legitimacy is a fairly durable phenomenon in the United States at both the Supreme Court and state supreme court level. However, in an age of rising distrust of American institutions, it is increasingly important to understand how judicial legitimacy functions within the context of widespread public ignorance. Without a better understanding of how individuals decide that institutions about which they know practically nothing are deserving of legitimacy, we are at a heightened risk of unintentionally harming those institutions and our own democracy. To understand how these elements may work together, this study focuses on two primary areas: 1) judicial legitimacy and the causal factors that influence whether an individual sees a court as legitimate, and 2) a better accounting of how widespread lack of knowledge about state supreme courts is in the United States.

In chapter two, I detail the theory of this project. Following the foundational work of David Easton (1965, 1975), I focus on judicial legitimacy as conceptualized through the idea of diffuse support. Some scholarly works included different measures of
legitimacy that are more closely akin to the idea of specific support (Benesh 2006; Cann and Yates 2008), but consensus emerged around the idea that judicial legitimacy is an idea better captured through Easton’s concept of diffuse support (Bartels and Johnston 2013; Gibson 2012; Gibson and Caldeira 2009; Gibson and Nelson 2016; Hansford, Intawan, and Nicholson 2018; Zilis 2018). Starting from this foundation, I also develop the theory with a focus on how little individuals know about state supreme courts (Gibson 2012) and the ways in which individuals use tools like heuristics to overcome their lack of knowledge (Darmofal 2005; Lau and Redlawsk 2001; Lupia 1994; Lupia and McCubbins 1998).

Synthesizing what we know about judicial legitimacy, lack of state supreme court knowledge, and the tools individuals rely on to overcome ignorance, I develop a cue-based theory of state supreme court legitimacy. In short, I argue that, when individuals with low knowledge of state supreme courts are asked whether they think of their state supreme court as a legitimate institution, they become aware of their ignorance of their state high courts. In addition to their support for democratic values, they turn to the United States Supreme Court in part to act as a heuristic, partially informing whether they think their state supreme court is a legitimate judicial institution. I borrow from the way that Gibson and Caldeira (1998) refer to Supreme Court legitimacy as akin to the loyalty ones feels for a friend. I argue that individuals understand that there are similarities between the Supreme Court and their state supreme court, and they are willing to extend their loyalty in the same manner they might treat the relative of a friend. The loyalty toward the relative, in this case the state supreme court, is not as strong as it is for the friend, the Supreme Court. However, the loyalty exists and is part of the complicated
process of conferring legitimacy, at least among those individuals who possess low levels of state supreme court knowledge. To test this theory, I rely on a convenience sample collected using Amazon’s Mechanical Turk.

The sample I rely on for the analysis in this study reports greater educational attainment, is more liberal, and skews younger than the general population of the United States. Given the evidence of widespread ignorance regarding state supreme courts that I find in chapter three, though, I argue these differences are not likely to matter for the purposes of this analysis. In chapter three, I report evidence that the public is more knowledgeable about the United States Supreme Court than their state supreme courts. More than 50% of respondents cannot answer even one state supreme court knowledge question correctly, even as 77.4% correctly answer that John Roberts is the Chief Justice of the Supreme Court. Further, while this ignorance of state supreme courts is high in the sample, it does not vary much across demographic characteristics like age, education, gender, ideology, or political party. Broadly speaking, a majority of the respondents to this survey appears to lack even basic knowledge about their state supreme courts, even as I find evidence that state supreme courts maintain high levels of legitimacy. For example, nearly 59% of respondents disagree or strongly disagree that their state supreme court should be eliminated if the people dislike their rulings, with a further 20.7% being uncertain. Nearly 70% of respondents report that individuals should obey state supreme court rulings even if they dislike them. This result supports my first hypothesis, which expects large scale ignorance of state supreme courts. The findings also illuminate the primary puzzle of this project: How do state supreme courts maintain such high levels of support among people who do not appear to know much about them?
In chapter four, I focus on my primary research question: Does the Supreme Court act as a cue for individuals when they decide whether they should confer legitimacy on state supreme courts about which they know nothing? I approach this question by relying on three different models to look for evidence of heuristic usage by respondents who have low knowledge of their state supreme court. In the survey, individuals are randomly assigned into one of five treatment groups. One group does not receive a treatment so that they may act as a baseline for comparison to the other treatment groups. The other four groups receive a treatment that is designed to stimulate thoughts of either diffuse support or specific support of the Supreme Court. The two groups who receive the treatment designed to stimulate thoughts of diffuse support receive either a description of the Supreme Court acting as a politicized institution over the past 40 years, or a description of the Supreme Court as routinely not voting based on party lines and upholding precedent regardless of whether the judges agree with it politically. The two treatments that attempt to stimulate thoughts of specific support are quoted sections from National Public Radio articles that cover the Merrick Garland confirmation and subsequent block by Senate Republicans or the Whole Woman’s Health v. Hellerstedt abortion case. These four treatments provide the primary test of the research question.

In each model, the index of state supreme court acts as the dependent variable. In the first model, all survey respondents are placed together. In the second and third models, respondents are subset by whether they answer zero state supreme court knowledge questions correctly or one or more knowledge questions correctly. In the model with all respondents, two results stand out as supportive of my hypotheses. The variable measuring the influence of the treatment that describes the Supreme Court as
being as politicized as the other branches is negative and statistically significant—evidence that negative information about the Supreme Court harmed state supreme court legitimacy. Additionally, knowledge of the Supreme Court is a positive predictor of state supreme court legitimacy, even as state supreme court knowledge does not have a statistically significant influence on state supreme court legitimacy. In the model that subsets respondents by level of state supreme court knowledge, a clearer picture emerges. Again, the variable measuring the influence of the treatment that describes the Supreme Court as being politicized is negative and statistically significant, but it is only so among respondents who cannot answer any state supreme court knowledge questions correctly. That treatment variable is not a significant predictor of state supreme court support among respondents who answer one or more state supreme court knowledge questions correctly. Further, the variable measuring Supreme Court knowledge is a positive predictor among respondents with low state supreme court knowledge, but it is not a significant predictor among respondents who are more knowledgeable about their state supreme court. These results support my theory that individuals with low levels of state supreme court knowledge are relying on the Supreme Court as a heuristic to help decide whether to confer legitimacy upon state supreme courts. Further, individuals with knowledge of state supreme courts do not show the same evidence of relying on the Supreme Court as a cue.

The results in the first two empirical chapters provide some insight into how individuals who lack state supreme court knowledge make decisions about judicial legitimacy. However, state supreme court selection methods vary, and in many states, these high court judges are selected through the process of a popular election. Given the
scholarly debate around the potential helpful or harmful influence of state supreme court elections on judicial legitimacy, it is important to understand how the election process intersects with individual ignorance of the courts. In chapter five, I subset the data between those respondents who live in a state with a state supreme court election in November 2016 and those that do not. The survey was in the field in December and January 2017, so the November election occurred not long before the survey. Simply comparing the number of respondents who answer even one question correctly between these subset data reveals an interesting dynamic. Nearly 35% of individuals in a state with a recent high court election answer one state supreme court knowledge question correctly versus 23% in a state without a state judicial election in November 2016. Almost two-thirds of respondents cannot answer even a single question about their state supreme court correctly when they live in a state without a recent election versus only half of respondents in a state with a recent high court election. This difference indicates that a recent judicial election may involve some degree of education. The difference in knowledge may also extend to those who do not answer any knowledge questions correctly, but through the influence of the campaign, possess greater awareness of the state supreme court, perhaps enough so as to reduce the need to rely on the Supreme Court as a heuristic.

To test the influence of a state high court election on heuristic usage by individuals with low levels of knowledge about state supreme courts, I subset respondents by knowledge and whether they live in a state with a recent state supreme court election. Among respondents with low state supreme court knowledge, the treatment that cast the Supreme Court as politicized in a negative way is a significant and
negative predictor of state supreme court legitimacy only for those living in a state without a state supreme court election in November 2016. Among respondents with low state supreme court knowledge living in a state with a judicial high court election in November 2016, none of the treatment variables are statistically significant. None of the treatments influence state supreme court legitimacy for respondents with higher state supreme court knowledge, no matter whether their state held a high court election in November 2016 or not. However, across subsets, support for democratic values is a statistically significant and positive predictor of state supreme court legitimacy. These results support my hypothesis that judicial elections reduce the need to rely on the Supreme Court as a cue among individuals with low state supreme court knowledge. Taken together, the results largely support the theory I describe in chapter two, where support for democratic values is the biggest predictor of state supreme court legitimacy, with additional factors like education and specific court knowledge as additional, complicated influences.

Collectively, this research provides evidence that there is a very large portion of the population that appears to be largely ignorant of state supreme courts. Further, through the experimental survey treatments I employ, it appears that those individuals with low levels of knowledge are relying in part on what they think about the Supreme Court. Although, a high court election appears to alter this reliance on the Supreme Court. This work largely confirms part of what the judicial legitimacy scholarship previously found. The perception of politicized courts is a danger to judicial legitimacy, and support for democratic values is a positive predictor of diffuse support for the courts. However, this project expands on our understanding of how legitimacy operates among
individuals without much judicial knowledge. These findings have potential implications for the courts and open new avenues for legitimacy research.

Implications

The implications of this research for the courts are varied. I start first with the issue already confronting courts in many states: judicial elections. In chapter five, I review the scholarship of judicial elections. Scholars report that judicial elections have the capacity to enhance legitimacy for the courts even as the campaign process introduces risks through fundraising and perceptions of politicized candidates (Bonneau and Cann 2011; Bonneau, Hall, and Streb 2011; Gibson 2012; Gibson et al. 2011; Gibson and Caldeira 2009, 2011). Concerns about elections and their accompanying campaigns usually motivate concerns about judicial legitimacy (O’Connor 2010). Even so, this project indicates that judicial elections appear to confer an added benefit of reducing reliance on the Supreme Court as a cue for state court legitimacy among individuals with low state supreme court knowledge. While certainly introducing risks to legitimacy by increasing the probability of candidates behaving in ways that individuals may perceive as politicized, the current study provides evidence that judicial elections may serve to increase public awareness of the candidates’ existence that reduces reliance on the Supreme Court as a heuristic.

This result raises a question: What are the potential implications of all states turning toward the usage of judicial elections? Based on this result and previous legitimacy research, so long as judges do not violate the norms of behavior that the public expects, judicial elections have the potential to positively influence judicial legitimacy. This goes beyond the benefits that previous scholars have found, including the perceived
benefit of accountability that voters believe elections offer (Gibson 2012), and extends to reducing the need to rely on the Supreme Court as a cue when deciding to confer legitimacy. At the very least, judicial elections raise awareness about state supreme courts, allowing even individuals with very low knowledge of state high courts to be able to distinguish them as separate institutions. The added benefit to state supreme court legitimacy seems to outweigh the risks that accompany judicial elections.

Today, the majority of states rely on some sort of election for their state supreme courts, ranging from partisan elections to retention elections. However, the risks are important to consider, both for states that already rely on elections and for those that may switch to some sort of election process in the future. Behavior that fails to meet the expectations that the public holds for judges threatens the legitimacy of the courts, and it would be wise to consider ways to safeguard judicial legitimacy during and after election processes. States may be able to act through fundraising limitations or public funding of judicial campaigns as means to avoid candidates engaging in behaviors that the public may perceive as politicized. This is an additional burden for states to carry, but in light of the positive influence elections appear to have on judicial legitimacy, the efforts are likely worthwhile.

Along the same lines, the political polarization that exists at the national level is a concern for state supreme courts. This carries the potential to harm in two primary ways. First, this project provides evidence that individuals with low knowledge of state supreme courts rely on the Supreme Court as a cue to guide whether they confer legitimacy on state supreme courts. As the national government becomes more and more polarized in the executive and legislative branches, there are risks that this will start to influence what
people think about the Supreme Court. For individuals who do not know a great deal about their state supreme courts, this potentially harmful influence on judicial legitimacy risks trickling down onto the lower courts in the judicial hierarchy. The second way that polarization threatens judicial legitimacy is through judicial elections. This is a real risk at the state level if judges have to run for election in order to acquire or maintain their jobs as judges in an environment where voters perceive judicial candidates as polarized and politicized. The results of this project indicate that there are openings for harm to judicial legitimacy through polarization, particularly if the public perceives polarization as influencing a politicized court.

Judicial scholars who research the legitimacy of the courts rarely directly deal with the greatest, if currently farfetched, threat to American judiciary institutions. What if the Supreme Court loses legitimacy? In the scholarly research available, the United States Supreme Court appears to maintain robust and durable legitimacy (Gibson 2012). However, the loss of legitimacy for the highest court is not an impossible scenario. The result of this project indicates that, if the Supreme Court loses legitimacy, the potential negative impact may cascade throughout the judicial hierarchy, at least among individuals who lack knowledge about the lower courts. As this study shows, the portion of the public that lacks knowledge about the state supreme courts is significant, and, given the lower profile that other courts have, it is not too large a leap to assume that this widespread lack of judicial knowledge is also true for other types of courts. To that end, scholars should not treat Supreme Court legitimacy as something that only influences one specific institution. Instead, it carries the capacity to influence legitimacy for other courts in the judicial hierarchy, with potentially positive and negative implications.
Future Research

This study reveals two major findings. First, individual knowledge of state supreme courts is low. Second, decisions on whether a court deserves legitimacy are partially intertwined with the knowledge individuals have about that court. Previously, scholarship on state supreme court legitimacy assumed that individuals knew enough about these courts to make informed decisions concerning judicial legitimacy for the purposes of an experimental survey. The results of the current study provide evidence that this assumption is, at best, flawed.

The use of this sort of federal heuristic among individuals with low institutional knowledge may not be confined to the judiciary alone. It is anecdotal, but in my experience teaching state and local government at a higher education institution, students are largely unaware of how their state governments work. If individuals rely on the Supreme Court as a cue for state supreme court legitimacy, similar federal-to-state heuristic processes may be occurring for state legislatures and governors but are not being accounted for in the scholarship. It is also possible that this heuristic usage does not only work in one direction. High profile state supreme court activity that helps or harms judicial legitimacy may also influence perceptions of the Supreme Court. While this study finds that the public is much more familiar with the United States Supreme Court, there are still large percentages of people who lack much knowledge of that institution as well. For those people, state supreme court actions that receive their attention may influence their perceptions of the Supreme Court. This project opens up the possibility that, instead of legitimacy acting as a concept that applies to individual courts, it is instead at least loosely related and intertwined with the legitimacy of other courts,
depending on the level of knowledge the individual conferring legitimacy possesses about a given institution.

Future studies of state supreme court legitimacy, or any type of judicial legitimacy scholarship that focuses on a court that is not well known, should account for this lack of knowledge and any hierarchical influences that may occur. This is the first study examining state supreme court legitimacy that specifically tests for how the Supreme Court influences the legitimacy of state high courts. With the evidence that there are a lot of individuals who do not know much about their state supreme courts and that those individuals rely in part on the Supreme Court as a cue, scholarship that does not take this result into account when constructing theories of state supreme court legitimacy are potentially missing an important causal factor. On a more fundamental basis, all judicial legitimacy studies need to take seriously the large dearth of knowledge among the public about state supreme courts. To cast this truth aside is to ignore what this study shows is an important piece of the puzzle of judicial legitimacy.
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APPENDIX A
SURVEY QUESTIONS

Dependent Variable Measures:

Positive Diffuse Support Treatment:

In a café near the White House, two observers were overheard talking. William is an attorney and Henry is a successful businessman.

**Henry**: All I hear on the news is how messed up American politics is today.

**William**: The only good institution in Washington, DC is the Supreme Court. It’s the only place left where citizens can go and expect to get an unbiased hearing.

**Henry**: I’ve heard a lot of people say that judges only care about politics. If they are Republican, they vote for Republican causes and the same if they are Democrats.

**William**: It’s not true. The Courts have been good about upholding precedent even if they disagree with it politically, which means that they uphold previous laws rather than making it what they want. The media likes to focus on a small number of cases where the judges split along party lines. But that’s just the media being sensational. The huge majority of cases don’t break down along party lines.

Negative Diffuse Treatment:

In a café near the White House, two observers were overheard talking. William is an attorney and Henry is a successful businessman.

**Henry**: All I hear on the news is how messed up American politics is today.

**William**: It’s in the courts too. Decisions are split along party lines all the time.

**Henry**: How long has it been going on?

**William**: The Supreme Court has, I’d say for about four decades now, become as political as the other branches of government, and the result has been more
controversial cases. You can’t trust that you’ll get a fair hearing with them. It’s all politics when it should be unbiased.

Specific Support Treatment about a Politicized Appointment:

From NPR (Chappell and Johnson, 2016):

Federal appeals court judge Merrick Garland is President Obama's pick to fill the Supreme Court seat left vacant by the late Supreme Court Justice Antonin Scalia.

Addressing the refusal by Republican leaders in the Senate to consider a Supreme Court nominee, Obama said that in Garland, he had chosen "a serious man and an exemplary judge."

He added that in discussions about Supreme Court vacancies — the current one, as well as earlier openings — "the one name that has come up repeatedly — from Republicans and Democrats alike — is Merrick Garland."

After the announcement was made, Republican Senate Majority Leader Mitch McConnell reiterated his pledge that the Senate would not take any steps toward confirming an Obama nominee. McConnell's fellow Republicans in Congress echoed his comments.

Liberal interest groups have joined the fight, arguing that President Obama’s pick is a centrist judge, while conservative groups argue he will push the court in a more liberal direction.

Specific Support Treatment about a Controversial Decision:

From NPR (Domonoske, 2016):

The Supreme Court has overturned a Texas law requiring clinics that provide abortions to have surgical facilities and doctors to have admitting privileges at a nearby hospital. The law was predicted to close many clinics and further reduce availability of abortion in Texas. The court has ruled the law violated the Constitution.

With a 5-3 decision in Whole Woman's Health v. Hellerstedt, the court reversed a decision by the 5th U.S. Circuit Court of Appeals, which had upheld the law.

Liberals and Democrats have hailed the decision. The president of Planned Parenthood, Cecile Richards, said in a statement that the Texas provisions were "dangerous" and the ruling against them is "a win for women."

Conservatives and Republicans argued that the now-overturned Texas law would have protected women's safety. Family Research Council President Tony Perkins said in a
statement that his organization "will continue our work to protect women and children from the predatory abortion industry."

**Democratic Values Measures**

**Support for Rule of Law:**

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

**Support for Liberty over Order:**

1. A society shouldn’t have to put up with those who have political ideas that are extremely different from the majority.
2. It is better to live in an orderly society rather than to allow people so much freedom that they can become disruptive.
3. Free speech is just not worth it if it means that we have to put up with the danger to society of extremist political views.

**Support for Tolerance of Minority Opinions:**

1. Majority rule may be an important principle for democracies, but the majority must always respect the rights of all minorities.
2. In politics, the majority ought to get what it wants, even if it means that the rights of some minorities are restricted.

**Political Knowledge Questions**

Bold and underlined words reflect original survey instrument.

1. From the list below, please select the current Chief Justice of the United States Supreme Court.
   a. William Rehnquist
   b. Ruth Bader Ginsburg
   c. John Roberts
   d. Sandra Day O'Connor
   e. Don't know

2. The Supreme Court of the United States has the final word on constitutional matters.
   a. Agree
   b. Disagree
   c. Don't know

3. President Obama appointed two of the three women on the United States Supreme Court today.
   a. Agree
b. Disagree
c. Don't know
4. What is the length of time that United States Supreme Court justices are appointed for?
   a. 6 years
   b. Life
   c. Until forced retirement at age 70
   d. Don't know
5. State supreme court judges in your state serve for terms that are
   a. For life
   b. Until forced retirement at a certain age
   c. A fixed number of years at the end of which they come up for a vote by the people or the legislature to continue serving
   d. Don’t know
6. How does your state select judges for the state supreme court?
   a. Confirmation by the state legislature
   b. Partisan election
   c. Recommendation from a nominating commission and appointment by the governor
   d. Nonpartisan election
   e. Don’t know
7. The state supreme court of your state has the final word on all issues regarding the constitution of your state.
   a. Agree
   b. Disagree
   c. Don't know

Control Variables

Education

1. What is the highest degree or level of school you have completed? If currently enrolled, highest degree received.
   a. Some high school, no diploma
   b. High school graduate, diploma or the equivalent (for example: GED)
   c. Some college credit, no degree
   d. Trade/technical/vocational training
   e. Associate degree
   f. Bachelor's degree
   g. Master’s degree
   h. Professional degree
   i. Doctorate degree

Age

1. What age range do you fall within from the options provided?
   a. Younger than 18
   b. 18 to 29
c. 30 to 39
d. 40 to 49
e. 50 to 59
f. 60 and above

Race

1. Are you Asian, Black/African American, Hispanic/Latino, Native American/American Indian, White, or a different race?
   a. Asian
   b. Black/African American
   c. Hispanic/Latino
   d. Native American/American Indian
   e. White
   f. A different race

Party

1. Do you identify as a Democrat, Republican, or Independent/other party?
   a. Democrat
   b. Independent/other party
   c. Republican

Ideology

1. Do you identify as very liberal, somewhat liberal, moderate, somewhat conservative, or very conservative?
   a. Very liberal
   b. Somewhat liberal
   c. Moderate
   d. Somewhat conservative
   e. Very conservative
APPENDIX B

DATA COLLECTION

To test the theories and hypotheses I developed, I fielded an experimental survey in which respondents were randomly assigned into one of four treatment groups or one group that did not receive a treatment. The relevant data for this analysis includes 673 respondents in a national sample recruited through Amazon’s Mechanical Turk in December of 2016 and January of 2017.88 I paid respondents $0.55 to complete the survey and they were only allowed to participate once. Completion times range from 2 minutes to 12 minutes.89 Respondents who earned Requester approval rates below 97%

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88 The sample includes 744 participants. I exclude 70 participants from the analysis because they do not live in a U.S. state. One additional participant is also omitted as an outlier. Tests for outliers revealed several respondents worth examining but only one warranted removal. In two minutes, the respondent I removed chose many options that were contradictory. Further, for each screen of survey questions asking about the dependent variable, democratic values, and the feeling thermometer, the respondent chose the same option within the same screen, even though these result in nonsensical patterns. Taken together, the results of the outlier tests, combined with the rapid completion of the survey and the patterns of answers is powerful reason for removal. No other respondent who emerged as a potential outlier revealed similar patterns that warrant removal. I remove this respondent from analysis with great caution however. I tested each model with and without the removed outlier. The exclusion of this outlier alters the statistical significance of one variable in one model in this dissertation. In chapter four, the model of respondents with low levels of state supreme court knowledge when the outlier is included shifts the p-value of the Negative Diffuse Treatment variable just above the .05 threshold of significance. Without the outlier, the variable reaches statistical significance. This is the only model in which the presence or absence of the outlier causes the p-value of any variable rises above or below the .05 level.

89 In trials with volunteers ahead of the survey launch, the survey took between 5-12 minutes to complete. However, MTurk workers report that as professional survey takers, they can take surveys more quickly than individuals who are not accustomed to answering survey questions, particularly on demographic questions. There are some concerns that users are relying on bots to quickly answer surveys but attention checks should serve to avoid those (Dreyfuss 2018). However, this does leave some predicament. While two minutes does not seem like long enough to take this survey, what cut off would be responsible? Each respondent successfully answered both imbedded attention checks. Given the research indicating the general reliability of MTurk surveys, aside from the outlier described in Appendix B, I elect to include any respondents who successfully answer the attention checks. While not an academic source, for a discussion among MTurk workers regarding this subject, see this Reddit thread: https://www.reddit.com/r/mturk/comments/6pvjxe/confused_requester_here_workers_completing_30/
on any previous Mechanical Turk tasks were prevented from participating. The sample is somewhat young and leans Democratic, as is common with Mechanical Turk surveys. I include more information about the demographics of the results in chapter three. However, there is wide geographic representation, including coverage of different methods of selection of state court judges.\footnote{This sample includes respondents from 46 states. There are no respondents who report living in Alaska, North Carolina, Wisconsin, or Wyoming.}
APPENDIX C
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Portions of the articles were used as experimental treatments to gauge state supreme court legitimacy. There are the two articles I drew from:


https://www.npr.org/sections/thetwo-way/2016/03/16/470643431/-i-ve-made-my-decision-on-supreme-court-nominee-president-obama-says

***

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