

ORIGINAL ARTICLE

The American public's attitudes over how judges use legal principles to make decisions

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Abstract

We investigate the American public's attitudes over an integral component of judicial behavior: the legal principles judges employ when making decisions. Our theoretical perspective argues that political preferences shape individuals' attitudes over how judges apply legal principles, mirroring ideological divisions expressed by political elites and judges. Using an original battery of questions, we find high support across all Americans for the use of certain, well-established legal principles, but stark differences in how liberals and conservatives evaluate the use of more controversial principles. In a survey experiment, we find that agreement (disagreement) between an individual's attitudes over the use of legal principles and the reasoning contained in a Supreme Court opinion is associated with increased (decreased) support for the Court decision.

Keywords: judicial politics; law; public opinion

Political institutions derive their power in large part from the support of those whom they govern. Thus, an understanding of public attitudes toward how actors within political institutions should behave is critical for understanding institutional power (Smith and Park, 2013; Lapinski *et al.*, 2016; Reeves and Rogowski, 2016). In this study, we provide new evidence about the relationship between the American public and the judiciary by measuring public attitudes over how the judiciary should function. We focus our attention on the American public's attitudes over how judges use legal principles, the individual legal factors that structure judicial decision-making.

Legal principles are critical for understanding and explaining judicial behavior. Judges regularly ascribe a primary role to these principles in shaping their jurisprudence (e.g., Scalia, 1997; Breyer, 2005) and political scientists have illustrated the important role legal principles play in influencing judicial decision-making (e.g., Hansford and Spriggs, 2006; Bailey and Maltzman, 2011). These principles also regularly appear in media discussion of the American courts, as illustrated by *New York Times* coverage of then-Supreme Court nominee Amy Coney Barrett's "broad commitments to originalism and textualism" and *Associated Press* coverage of oral arguments in *Dobbs v. Jackson Women's Health Organization* that highlighted the relevance of precedent, plain meaning, and the societal consequences of the decision.¹

Despite their importance, legal principles have received relatively little attention in studies of public opinion toward the judiciary; we contribute theoretically and empirically to an emerging literature on this subject (e.g., Gibson and Caldeira, 2009b; Greene *et al.*, 2011; Farganis, 2012;

¹See <https://perma.cc/GT55-KF9U> and <https://perma.cc/HY24-5C8L>.

Krewson and Owens, 2021, 2023). We draw upon data from a nationally representative survey of over 2300 Americans conducted at the beginning of the Supreme Court's October 2017 term to explore the nature of these views. Respondents answered a novel battery of questions designed to measure their attitudes over how Supreme Court judges apply legal principles to constitutional cases.

Our analysis reveals that Americans' attitudes over how judges apply legal principles follow predictable patterns that mirror how these attitudes are arranged among political elites. First, we find strong support across all Americans for legal principles that are well-established and broadly accepted in the legal academy as important for judges to consider in their decisions, such as adherence to precedent. This near-universal support reflects the high esteem these legal principles hold in the eyes of judges, politicians, and legal commentators of all political stripes. However, we find clear differences across ideological lines in attitudes toward less traditionally accepted principles of judging, such as considering public opinion. These ideological divisions reflect the differences in attitudes among political elites, with liberals considerably more supportive of the use of these non-traditional principles than conservatives. Importantly, we find that increased knowledge of the Supreme Court magnifies these political differences, providing support for our theoretical argument that as individuals are exposed to elite political arguments about these principles, politics becomes a more important determinant of an individual's views over their use. An experimental analysis reveals that when evaluating case outcomes, (dis)agreement between an individual's own attitudes over the legal reasoning judges use and the legal reasoning given by judges leads to (decreased) increased specific support for that outcome. We also find limited suggestive evidence that the use of popular principles is associated with higher evaluations of judicial legitimacy.

Our study provides new insight into the relationship between the American public and the judiciary. While this is not the first study to measure Americans' attitudes about legal concepts, we combine a theoretical framework grounded in the role political elites play in informing Americans about judicial policymaking with a methodological approach that measures attitudes toward individual legal principles. So doing, our study presents a comprehensive picture of the structure, sources, and consequences of Americans' attitudes toward an essential component of judicial behavior.

The political nature of the attitudes we measure showcases the integral role politics plays in shaping attitudes toward the judiciary and reveals the intimate connection between law and politics in the eyes of the American public. Even evaluations of putatively apolitical legal principles are shaped by an individual's politics, highlighting the fundamental role of politics in shaping American attitudes toward the courts. Thus, we contribute to growing branches of scholarship that reveal the important role of elites in shaping attitudes toward the judiciary (e.g., Clark and Kastellec, 2015; Armaly, 2018) and illustrate how political views structure evaluations of the courts (e.g., Swanson, 2007; Bartels and Johnston, 2013; Christenson and Glick, 2015). That these attitudes can shape support for case outcomes and legitimacy shows that legal principles play a substantively important role in evaluations of the judiciary. In this way, we provide insight into the criteria the public uses to assess whether judges behave in a manner that preserves and enhances judicial legitimacy (Gibson and Caldeira, 2011; Farganis, 2012).

1. Attitudes toward how institutions and courts should behave

Political institutions, including unelected judiciaries, rely on the support of the governed as a source of political power. With no electoral mechanism to confer legitimacy on these courts, judges must be attentive to the standing of the courts in the public's eye. Scholars have explored the factors related to legitimacy evaluations, showing that legitimacy is associated with greater familiarity with the courts (Gibson and Caldeira, 2009c), fundamental values such as support

for democratic norms (Caldeira and Gibson, 1992), and how political elites talk about the courts (Nicholson and Hansford, 2014; Clark and Kastellec, 2015; Rogowski and Stone, 2021). This research agenda does not provide, however, a detailed examination of what Americans want their judges' behavior to be like while in office. For example, while we know that the public values judges who apply the law when making decisions (e.g., Sen, 2017), this is a relatively general measure of views toward judicial behavior. There are a wide set of legal principles judges employ, and scholarship provides little insight into the public's attitudes over their use (with a few exceptions [e.g., Greene *et al.*, 2011; Krewson and Owens, 2021], which we discuss further below). This contrasts with a literature that directly explores how the public wants political officials to behave in other institutional settings (e.g., Gelpi, 2010; Carpenter, 2014; Lapinski *et al.*, 2016; Reeves and Rogowski, 2016).

Existing scholarship offers insight into what these views might be like. Americans reward judicial nominees who are experienced, qualified, open about their political views, ideologically proximate, and share their descriptive characteristics (Sen, 2017; Chen and Bryan, 2018; Kaslovsky *et al.*, 2021; Rogowski and Stone, 2021). Support for individual Court decisions and Court legitimacy can be shaped by the alignment between an individual's ideological preferences and Court rulings (Swanson, 2007; Bartels and Johnston, 2013). Evidence from judicial elections suggests that voters accept and support judicial candidates taking political stances, though campaign activity that is too political can erode court support (Gibson, 2012). In their study of legal realism, Gibson and Caldeira (2011) find that Americans view judges as "principled in their decisionmaking" (209) and that these views are critical to the maintenance of judicial legitimacy, but we know little about what principles the public might have in mind. Similarly, Farganis (2012) shows how Court opinions rooted in legalistic justifications can improve judicial legitimacy, but does not study what particular legal arguments or principles might be used in such a justification. While this scholarship does not directly ask Americans how they want their judges to behave, these studies provide evidence that the public expects judges both to base their rulings on legal principles and act in service of ideological goals.

Cues from political elites should also play an important role in shaping how Americans evaluate judicial behavior. A large literature details the importance of elite cues (e.g., Conover and Feldman, 1989; Chong and Druckman, 2007). In political domains like the judiciary where individuals lack other sources of nuanced knowledge about the institution and its processes, elite cues play a particularly important role in shaping mass attitudes. Scholarship shows the impact media coverage can have on how the public evaluates the judiciary (Hoekstra and Segal, 1996; Zilis, 2015) and reveals that cues and messages from partisan elites influence individual attitudes toward judicial nominees, candidates, and rulings (Squire and Smith, 1988; Nicholson and Hansford, 2014; Rogowski and Stone, 2021).

2. New data on Americans' expectations of judicial behavior

In this paper, we interrogate the American public's attitudes over an integral dimension of judicial behavior: the legal principles judges employ when making decisions. By "legal principles," we refer to the factors that judges and legal scholars argue structure judicial behavior on the bench; for the purposes of this study, we focus on constitutional interpretation. Legal principles are regularly discussed by political elites in coverage of Supreme Court cases and in discussion of Supreme Court nominees, the two instances in which the American public is most often exposed to elite communication about the federal judiciary. For example, all 28 front-page *New York Times* stories on constitutional Supreme Court cases from 2010 to 2014 described the reasoning behind the decision given by the justices, often giving multiple types of rationales and noting the justifications used both by the majority and by dissenting justices.²

²See Appendix Section 1.2.

The commentary that surrounds Supreme Court nominations further highlights the weight political elites place on a justice's approach to the law. In nominating Neil Gorsuch to the Court, President Trump lauded him as someone "who loves our Constitution and someone who will interpret [our laws] as written" while Senator Jeff Flake championed Gorsuch's commitment to legislative deference.³ These statements reflect broader patterns in how politicians and the media communicate about Supreme Court nominees. Roughly 25 percent of all Senator press releases and 20 percent of network news transcripts about Supreme Court nominees directly reference a principle of judging.⁴ Furthermore, approximately 11 percent of questions that Senators ask of Supreme Court nominees during Judiciary Committee hearings are about principles of judging, with these patterns remaining relatively constant across the past six decades (Collins and Ringhand, 2013: 103, 131–33). The discussion of legal principles happens at similar rates to other important topics.⁵

Previous studies provide insight into the public's attitudes toward judges' use of the law. Farganis (2012) shows that justifying a decision by referencing religious values leads to lower Court loyalty compared to using a legal argument based on precedent, although a justification based on public opinion did not perform worse than the legalistic argument. Greene *et al.* (2011) find that support for originalism is associated with conservatism and moral traditionalism. Krewson and Owens (2021) employ a conjoint design to study whether a hypothetical judge's judicial philosophy shapes a respondent's support for the judge's nomination. The authors find that certain legal philosophies (originalism) are more supported than others (adherence to precedent, living constitutionalism) and that partisanship conditions these views, with Democrats more supportive of living constitutionalism and Republicans originalism (see also Krewson and Owens, 2023).

We build upon these studies by combining a unified theoretical and methodological approach to present a comprehensive picture of the structure, sources, and consequences of Americans' attitudes toward how judges apply the law. While we are not the first study to measure Americans' attitudes about legal concepts (e.g., Gibson and Caldeira, 2009b; Greene *et al.*, 2011; Krewson and Owens, 2021, 2023), we take a different theoretical perspective from previous work. As described further in the next section, we conceptualize these attitudes as about "principles" that are either "traditional" or "non-traditional" and theorize that Americans' views differ across these ostensibly apolitical principles depending on elite cues and one's political sophistication. In this, our approach differs from research that has considered but ultimately not endorsed the view that elite cues drive the strength of attitudes toward the competing judicial philosophies of originalism and living constitutionalism (Krewson and Owens, 2023).⁶ In our perspective, elite cues affect *which* principles Americans support, but more sophisticated Americans (especially liberal ones) may still support a range of principles. Thus, our theory helps elucidate the sources of these attitudes and highlights the interconnection of law and politics in the eyes of the American public.

In order to test our theoretical expectations, we measure attitudes toward ten individual principles of judging in a battery where respondents are free to rate multiple principles as important or unimportant rather than measuring attitudes over comprehensive judicial philosophies such as originalism and living constitutionalism that are in opposition.⁷ This follows from how judges

³See <https://perma.cc/8DW2-NN7V> and <https://perma.cc/42NK-6XNG>.

⁴Table A-1 and Figure A-1 illustrate how both partisan and non-partisan sources discuss these principles.

⁵E.g., about 15 percent of Senator comments are about "nominee background." Among civil rights comments (26 percent of the total), 23 percent are about racial discrimination and 13 percent about abortion (Collins and Ringhand, 2013: 103, 111).

⁶Our theoretical framework is most similar to that presented by Greene *et al.* (2011), who hypothesize that attitudes toward originalism may be shaped by in part by "successful branding by partisan or ideological signalers" (392).

⁷This approach is most similar to that of Gibson and Caldeira (2009b) and Greene *et al.* (2011), who examine the link between "judiciousness" or "judicial values" and support for Justice Alito and originalism respectively.

and politicians express support for a wide range of legal principles and fits with our theoretical expectations that Americans' views, at least among those with more political sophistication, mirror those of elites. Our design allows us to capture possible heterogeneities in Americans' views over these principles. By asking about a wide range of principles and considering the correlates of support for each one, we provide a rich descriptive account of how the American public evaluates the use of law in judicial decision-making and a direct test of our theoretical argument.

We also investigate the consequences of holding these views for evaluations of the decisions the Supreme Court makes, focusing on lower-profile cases. As judicial decisions are typically described in terms of the legal principles we measure, this allows us to directly test the importance of the attitudes we measure and complements existing scholarship that explores the role judicial philosophies play in shaping evaluations of prospective judges and decisions on high-salience issues such as abortion and affirmative action (Krewson and Owens, 2021, 2023).

2.1 Measuring attitudes toward legal principles

Among legal scholars, there exists considerable disagreement concerning the appropriate principles of judging. However, there are some principles that are widely accepted, at least in some form, by judges and political elites and are frequently discussed in the popular press. We refer to these principles as “traditional” legal principles, to denote their near-universal acceptance by judges and elites as important to use when interpreting the Constitution.

There is widespread agreement among jurists that text, history, and precedent are relevant factors to consider in constitutional interpretation. One common tool is the consideration of the original meaning of the constitutional text. Some judges, especially self-proclaimed originalists, have placed a primary emphasis on the principles of original intent (Bork, 1971) or original public meaning (Scalia, 1997). Importantly, however, other judges—even those who have argued for a consideration of a broader array of factors (e.g., Breyer, 2005)—still support considering original meaning, even if they place a lesser emphasis on it. Consider, for example, Elena Kagan's statement in her Supreme Court confirmation hearings that “we are all originalists” in response to a question about constitutional interpretation.⁸ Thus, even though judges may differ about the appropriate emphasis to be placed on these factors, there is little debate that these factors are at least appropriate to consider when interpreting the Constitution.⁹ We emphasize that this agreement extends across political and ideological lines, with judges of all political stripes supportive of some consideration of these traditional factors in constitutional interpretation.

Other factors one may take into account when interpreting the Constitution, such as what the practical consequences of a decision would be or perspectives from other countries, generate more division among jurists. Consider, for example, *Roper v. Simmons*,¹⁰ where Kennedy writes for the majority that “[i]t is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty” (578), leading Scalia to write at length against the consideration of international law in a dissent (622–28). These disagreements often divide jurists along political lines, with conservative judges typically opposed to the consideration of these less traditional factors (those beyond the traditional tools of text, history, and precedent) and liberals more open to their use.¹¹

Table 1 shows the set of legal principles we focus on in our study.¹² Some of these principles are what we refer to as widely supported “traditional principles,” while we refer to less widely

⁸See also Strauss (1996: 881): “Virtually everyone agrees that the specific intentions of the Framers count for something.”

⁹In our study, we focus on attitudes toward legal principles rather than legal philosophies. For this reason, we measure support for the consideration of the legal principles of original intent and original meaning, which have broad support among judges, rather than support for the judicial philosophy of originalism, which does not.

¹⁰543 US 551 (2005).

¹¹Consider Justice Breyer's approach to judging, which he describes as “a broader interpretive approach that places considerable importance upon consequences,” which he prefers to approaches “that place greater weight upon language, history, and tradition” (2005: 11f).

¹²We provide more details on how survey respondents were asked to evaluate these principles below.

Table 1. Survey battery: principles of judging in constitutional cases*Traditional*

The plain meaning of the constitutional text to a modern reader.
 The intent of those who wrote the constitutional provision.
 What most Americans thought the constitutional right meant when it was adopted.
 What previous Supreme Court decisions on the topic have said.

Non-traditional

The likely consequence to society of ruling one way or another.
 What other countries do in similar circumstances.
 What is consistent with current public opinion.

Other (no clear theoretical expectations)

Whether the government has a strong reason for restricting the right, such as national security.
 Whether the right involved political activity.
 Whether a state or the federal government is accused of violating the right.

Note: Questions asked in the October 2017 Harvard/Harris Poll. Respondents evaluated the importance of each of these principles for Supreme Court judges on a four-point scale. Response options were very important, somewhat important, not very important, or not important at all.

accepted principles that divide jurists and elites along political lines as “non-traditional principles.” In addition, we asked about some additional principles which do not fall into the “traditional” category but for which we did not have *ex ante* hypotheses about how political attitudes would be related to responses (the “other” category). By asking about a wide variety of principles, we are able to provide a rich descriptive account of Americans’ views on judging. Of course, there are a broad array of factors that could enter into judicial decision-making in constitutional cases. Our decision rule in choosing the principles we included in our survey was to ask about some of the most salient of these principles, both in the legal community and in political discussion.¹³

We recognize that legal principles are not a topic of everyday conversation for the majority of Americans. However, we believe that our measurement strategy allows us to capture meaningful attitudes toward the use of these principles. First, we attempted to avoid unnecessary jargon in constructing the language we used to measure these attitudes (e.g., we explained the concept of precedent rather than simply using that word). Second, legal principles—while unlikely to be often discussed by ordinary Americans—are regularly invoked by political elites when discussing cases and prospective judicial nominees, as the examples of this behavior we provided above illustrate. We therefore expect Americans, especially those who are politically attentive, to have been exposed to these concepts in political coverage of the judiciary. Third, existing studies have found that Americans hold meaningful and predictable attitudes toward broader judicial philosophies (Greene *et al.*, 2011; Krewson and Owens, 2021).

2.2 Elite rhetoric and attitudes toward judicial principles

To develop expectations for how Americans’ attitudes toward these principles are arranged, we emphasize the role of political elites, in contrast to scholarship that either remains agnostic (Krewson and Owens, 2021) or considers but ultimately does not endorse the role of elites in shaping attitudes toward the law (Krewson and Owens, 2023).¹⁴ We expect that attitudes toward principles of judging are particularly likely to be shaped by political elites. These are a class of views that are relatively sophisticated, even compared to other attitudes toward the judiciary,

¹³We nevertheless note that there are a wide variety of other principles we could have asked Americans about and see this as an important opportunity for future research.

¹⁴Krewson and Owens (2023) find no relationship between the strength of an individual’s ideological self-identification and their strength of views on originalism, although they note that “[t]he estimated effect of strength of ideology decreases among low knowledge respondents to a substantial degree” (955).

such as support for the Supreme Court or a judicial nominee. This means that the average individual likely must rely on elite cues to develop attitudes toward the use of legal principles.

Elite attitudes toward legal principles are intimately related to politics and ideology. Those judges who advocate focusing exclusively on the more traditional principles of judging—like Justice Scalia and Robert Bork—tend to have conservative political views, while those judges supportive of using non-traditional legal principles—like Justice Breyer and Goodwin Liu (Liu *et al.*, 2010)—tend to have liberal political views. Additionally, liberal and conservative elected officials also talk about principles of judging in different ways. While both conservative and liberal elites tend to emphasize traditional legal principles, liberal elites also espouse the use of non-traditional principles. For example, in confirmation hearings, Republicans spend a considerably greater proportion of their time asking questions related to judicial restraint and original intent than Democrats, indicative of the greater relative emphasis conservative elites place on these principles of judging than liberals.¹⁵

Given how elites think and communicate about the legal principles used in judicial decision-making, we expect to see two patterns in American attitudes toward these principles. First, nearly all political elites and judges profess some support for the traditional legal factors. For this reason, we expect all Americans to evaluate positively the use of these legal factors by judges. Second, we expect political divisions in how Americans evaluate what we call non-traditional legal principles. Given the stark differences in levels of support for these principles between conservative and liberal political elites, we expect a similar pattern of divergence among members of the American public. We expect that these differences will be magnified among more politically knowledgeable respondents. These individuals are most likely to have been exposed to and internalize the elite political divisions over the use of these principles. In addition, these are the most likely respondents to understand the political ramifications of judicial behavior, and thus to make the connection between their own personal politics and how judges behave.

To investigate the public's attitudes over the legal principles that judges employ when ruling on cases, we included a module of questions in the October 2017 Harvard/Harris Poll, a nationally representative survey of 2305 American adults that measured their attitudes toward a range of questions related to American politics. Survey responses were collected between 14 and 18 October.¹⁶

We measure individuals' views on the principles upon which judges make their decisions with the battery of ten questions shown above in Table 1.¹⁷ To do so, we first present respondents with the statement, "You will see a series of principles Supreme Court justices may use when deciding cases about constitutional rights, such as freedom of speech, equal protection under the laws, or the right against self-incrimination. For each, please state whether you think the principle is very important, somewhat important, a little important, or not important at all."¹⁸ ¹⁹ Then, evaluations of the ten principles (in a random order) followed. Afterward, we asked respondents about their ideology as well as their knowledge of the Supreme Court.

2.3 Americans' attitudes over the use of judicial principles

We begin by presenting the descriptive patterns in Americans' evaluations of ten principles of judging. Table 2 presents the percentage of respondents who reported that each of the principles was very important or somewhat important. These descriptive results reveal that, consistent with

¹⁵See Figure A-2.

¹⁶Table A-2 provides descriptive statistics of the sample.

¹⁷Respondents were presented only with the prompt and the principles presented in Table 1. Respondents did not see our categorization of principles into "traditional," "non-traditional," and "other" categories.

¹⁸A similar four-point measure of importance has been used to measure related questions in previous research, such as attitudes toward originalism (Greene *et al.*, 2011) and evaluations of characteristics of Supreme Court nominees (Gibson and Caldeira, 2009a).

¹⁹We are confident that our respondents interpreted our prompt in the way we intended. See Appendix 1.8.

Table 2. Percentage of respondents rating a principle as important

	All (%)	Liberal (%)	Moderate (%)	Conservative (%)
<i>Traditional principles</i>	80	80	81	81
Plain meaning	81	82	83	79
Original intent	88	86	87	92
Opinion when adopted	74	70	75	75
Precedent	78	81	77	76
<i>Non-traditional principles</i>	56	64	61	42
Consequences	80	89	84	69
Other countries	40	48	44	26
Public opinion	48	57	54	32
<i>Other principles</i>				
Strong reason	84	83	86	82
Political activity	62	68	64	55
State or federal	87	90	87	84

Note: Respondents evaluated the importance of using each of these principles for Supreme Court judges on a four-point scale. Response options were very important, somewhat important, not very important, or not important at all. Values are weighted to account for respondents' likelihood of appearing in the survey.

our theoretical expectations, our set of traditional principles are viewed as very or somewhat important by nearly all Americans (74–88 percent, depending on the principle). The descriptive results also reveal that two of our non-traditional principles of judging are viewed as important by a minority of Americans, the role of contemporary public opinion (48 percent) and what other countries would be likely to do on the case (40 percent); the third, considering the societal consequences of a decision, was viewed as important by 80 percent of Americans. Consistent with our expectations, we see a divergence between conservatives and liberals in support for the use of non-traditional principles. While respondents who identify as conservatives espouse a relatively traditionalist view of the use of principles of judging (81 percent average importance), they view the non-traditional principles as much less important (42 percent average importance). Liberals share this appreciation for the use of traditional principles (80 percent), but they also are supportive of a relatively more non-traditional approach to judging than conservatives (64 percent), with a 22-point gap between liberals and conservatives on these principles.

We also find that our classification of principles into traditional and non-traditional groupings reflects the results of a factor analysis.²⁰ This is evidence that Americans' attitudes toward principles of judging can be understood by grouping these principles into traditional and non-traditional sets. In a series of additional analyses that we present in the Appendix, we investigate how the public's attitudes toward the use of these legal principles varies across a set of other politically relevant characteristics, including race, gender, education, and income.²¹

3. Sources and consequences of views on principles of judging

In the previous section, we provided evidence that the American public structures their attitudes toward principles of judicial decision-making along traditional and non-traditional lines. In the following sections, we investigate the source and consequences of these attitudes. First, we use our nationally representative survey data to explore the associations between a respondent's ideology and knowledge of the Supreme Court and their support for traditional and non-traditional principles. The patterns we uncover here will provide evidence as to how Americans' personal politics and likelihood of exposure to elite discussion of these principles shape their views toward how

²⁰See Appendix 1.10 for more details.

²¹See Appendix 1.9. Of particular note are large gaps in support for non-traditional principles across racial groups. We hope that these analyses inspire future scholarship and investigation of these patterns, especially given what we know about how race matters in shaping attitudes toward the judiciary (e.g., Gibson and Nelson, 2018).

judges behave on the bench. Second, we employ an experimental design to understand the consequences of supporting these principles for evaluations of judicial behavior. We investigate the degree to which views over the use of these principles shape evaluations of Supreme Court decisions above and beyond the role of an individual's political preferences. This allows us to understand how these attitudes operate in political context and illustrates the practical consequences of the attitudes we measure.

3.1 Politics, knowledge, and attitudes toward principles of judging

In this section, we more systematically investigate whether Americans' political preferences are associated with attitudes over the use of legal principles. Our theory leads us to expect that Americans of all political stripes will evaluate the use of traditional principles in favorable terms. However, we predict that conservatives will support non-traditional principles of judging less than liberals, following the pattern we see among political elites and judges who espouse these views. Furthermore, we expect that these differences will be magnified among more politically knowledgeable respondents (but cf. Krewson and Owens, 2023).

In our analysis, we conduct separate linear regressions of a respondent's support for each of our ten principles of judging on indicators for respondents' ideological preferences, coded as conservative, moderate, or liberal.²² Our outcome variables range from 0 to 1, with the four importance ratings scaled equidistantly.²³ Our results are not sensitive to our model choice; we obtain substantively similar results using ordered logistic regression models.²⁴ We measure respondents' knowledge of the Court using a seven-point scale that notes the number of correct answers to a series of factual questions about the Court; a fifth of respondents answered all seven questions correctly, nearly half of respondents answered four to six questions correctly, and the remaining 31 percent answered zero to three correctly.²⁵ We include this measure of knowledge and an interaction between knowledge and a respondents' ideology in our models. Interacting the knowledge variable with respondents' political characteristics allows us to test our expectations about whether more knowledgeable individuals adhere more closely to the principles favored by elites who share their political views.²⁶ If so, we expect to see increased differences between conservatives and liberals in how they evaluate non-traditional legal principles, but not traditional principles, as judicial knowledge increases.

We present the results from our analysis in Figure 1, which presents predicted levels of support for each of our principles as a function of respondent ideology and knowledge about the Court. Our full regression models, as presented in Appendix Tables A-9 and A-10, include moderates and covariates. In addition to the ten individual principles, we also present results averaging across the traditional and non-traditional principles in the first two panels of the figure.

Both individually and when averaging across principles, we find high and consistently positive attitudes toward the *traditional* principles of judging for all respondents—regardless of their ideological viewpoints. The positive evaluations of traditional principles among both conservatives and liberals hold across all levels of political knowledge. Indeed, on average, our full model predicts that liberal respondents are roughly 2.2 percentage points more likely to express support for

²²Our survey measures ideology on a five-point scale; we classify respondents who identify as “very” or “somewhat” liberal as liberal, and the same for conservatives. Our models employ survey weights to account for respondents' likelihood of appearing in the survey.

²³Possible values are 0, 0.33, 0.66, and 1.

²⁴See Appendix Table A-11 for ordered logistic regression results.

²⁵See Appendix 1.14 for a description of the knowledge questions and the proportion of respondents at each level of knowledge. We have full support across all eight possible values of this variable.

²⁶We expect that respondents who have more knowledge about the Supreme Court have been exposed to more elite cues about the judiciary, since this information is likely to be conveyed to ordinary Americans by politicians and the media. While this measure has the benefit of focusing on the judiciary specifically, it is ultimately a proxy for exposure to elite cues; developing further measures of exposure to elite cues about the courts is an important avenue for future research.

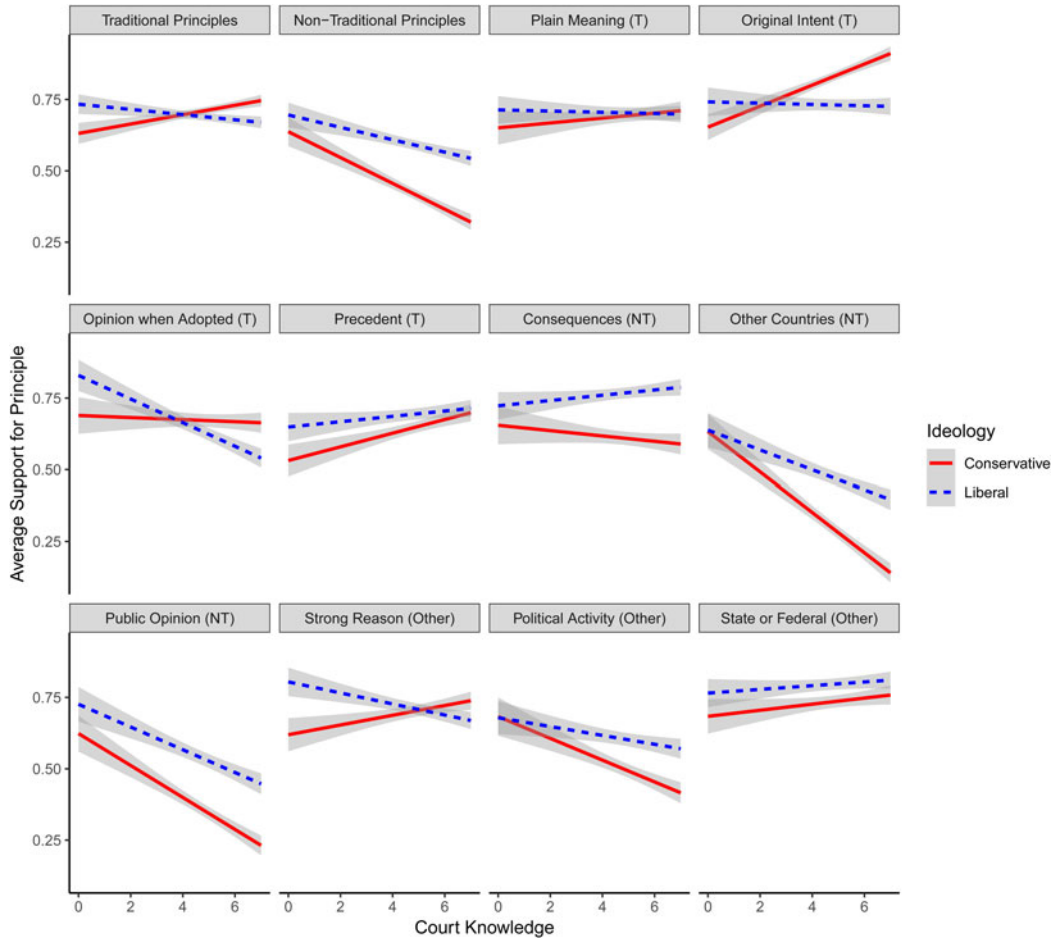


Figure 1. Politics, judicial knowledge and support for principles of judging.

traditional principles than conservatives. While there are some substantively small differences in support for particular traditional principles between liberals and conservatives at certain levels of Court knowledge, the broad takeaway is that Americans of all political stripes are generally supportive of the traditional principles of judging.²⁷ That we observe little effect of Court knowledge on views toward traditional principles is in line with our expectations, as both liberal and conservative elites are largely supportive of the use of traditional principles of judging. We note that individual principles exhibit greater variation than in the aggregate. Perhaps unsurprisingly, given conservative elite support for the judicial philosophy of originalism, conservatives increase in their support for original intent as a function of knowledge. Nevertheless, as expected, high-knowledge liberals continue to support the principle of original intent. The variation across individual principles illustrates the importance of the measurement of a wide variety of principles.

When turning to *non-traditional* principles, however, we observe a substantively significant divergence in how liberals and conservatives evaluate the use of these principles as a function of Court knowledge. As for the traditional principles, low-knowledge liberal and conservative respondents exhibit only substantively small differences in their evaluations of non-traditional principles (our model predicts an average difference of 7.9 percentage points for respondents

²⁷See Appendix 1.12 for additional discussion.

who fell in the bottom third of Court knowledge). However, as knowledge increases, liberals and conservatives significantly diverge in their evaluations of the use of non-traditional principles. In particular, conservative respondents become considerably less supportive of the use of non-traditional principles as knowledge increases. Our model predicts that liberals who fell in the top range of Court knowledge (6 or 7 on the knowledge scale) were on average 19.3 percentage points more supportive of non-traditional principles than high-knowledge conservatives.²⁸ This divergence is approximately 2.4 times as large as the average difference in support for non-traditional principles among low-knowledge conservatives and liberals. Importantly, these differences in attitudes mirror the disparate attitudes toward these non-traditional principles among political elites.

3.2 The consequences of views on principles of judging

We have shown that Americans' attitudes toward the use of principles of judging follow predictable patterns in line with those expressed by ideologically sympathetic elites. We now explore whether these attitudes have consequences for how Americans evaluate Supreme Court cases. We focus on cases as the principles we measure attitudes toward are the same principles that politicians and the media use to explain Court decisions. Evidence that these attitudes have predictive power in explaining views toward cases beyond an individual's personal politics would show legal principles serve as substantively important evaluative criteria that shape attitudes toward the American judiciary.

We investigate whether the use of particular legal principles in a Supreme Court ruling affects respondents' support for the case. We expect that respondents will exhibit greater support for outcomes that justify the decision using principles the respondent *ex ante* supports the use of, and lesser support for outcomes using principles they do not support the use of. To study this relationship, we ran a survey on Amazon Mechanical Turk (MTurk) with 872 respondents in September 2018, 426 of which were randomized into receiving this experiment.²⁹ We note that, although our respondents were not drawn from a nationally representative sample, research has shown that experimental studies conducted with MTurk samples uncover treatment effects that resemble those from more representative samples (Berinsky *et al.*, 2012). Importantly for the purposes of our study, respondents' views on principles of judging in our MTurk sample closely resemble those from our nationally representative October 2017 survey.³⁰ Furthermore, our sample's respondents are reasonably reflective of the American population.³¹

To begin, each respondent evaluated the battery of questions to measure their attitudes toward principles of judging we presented above.³² Then, respondents were randomized into receiving one of the two following case prompts about two actual Supreme Court decisions, one with a liberal outcome and one a conservative outcome.³³

- In *Luis v. United States*, the Supreme Court ruled that the government cannot freeze financial assets that belong to criminal defendants accused of committing a crime when the defendant wants to use that money to pay for a lawyer.
- In *Town of Greece v. Galloway*, the Supreme Court ruled that the invocation of prayer at a local legislative session does not violate the First Amendment's prohibition on governments establishing a religion.

²⁸See Appendix 1.12 for additional discussion.

²⁹This study was approved by Harvard University's Institutional Review Board.

³⁰See Appendix 1.15.2.

³¹Our sample's demographic and political characteristics are shown in Tables A-13 and A-14.

³²The question wording follows that used in the October 2017 survey presented in Table 1, with three exceptions noted in Appendix 1.15.1.

³³As some respondents may have been familiar with the outcomes of these cases, in our analyses with controls (Tables A-15 and A-16) we include respondent knowledge of the Supreme Court. These models also account for respondent ideology; uncertainty about the ideological ramifications of these decisions would minimize the effect of ideology in these models.

We randomly assigned 20 percent of respondents into the control condition, and they received no further text in the prompt. The remaining 80 percent of respondents randomly received two of the following five principles that explain how the judges decided the case. We structure the treatment in this way for two reasons. First, including discussion of multiple principles helps us more closely mimic real-world Court opinions and popular discussion of them; justices typically rely upon multiple components of legal reasoning when making decisions and coverage of cases in the media is accompanied by descriptions of these multifaceted rationales.³⁴ Second, this design allows us to study a range of scenarios where respondents *ex ante* support none, one, or two the principles they received in the treatment.³⁵

Each sentence was structured as follows: “The majority opinion in the case argued that [reason one] and that [reason two].” The principles were as follows:

- the text of the [Sixth Amendment/First Amendment] clearly implies the right to [use one’s property to pay for a lawyer/hold a prayer before a legislative session] (Plain Meaning)
- the writers of the Constitution did not intend to [prohibit the use of one’s property to pay for a lawyer/prohibit legislative prayer] (Intent)
- the ruling has a firm basis in precedent from previous Supreme Court cases (Precedent)
- the ruling would lead to more positive consequences for society than a ruling that [allowed for freezing assets/prohibited legislative prayer] (Societal Consequences)
- the ruling was in line with the views of a majority of the American public (Public Opinion)

Our outcome variable is a binary measure of the respondent’s expressed support for the Court’s ruling in the case. We are interested in how the use of particular principles that may or may not be supported by a respondent are associated with support for the decision. To these ends, we operationalize our main explanatory variable as follows. If a respondent received an experimental prompt that contained two principles that he or she had *ex ante* rated as “very important” or “somewhat important,” we labeled the treatment as *Both Important*. Conversely, if the respondent rated both principles “not very important” or “not at all important,” we labeled the treatment as *Neither Important*. We classify a mixture of one principle rated as important and the other rated unimportant as *Mixed Importance*, with the control group as *No Justification Given*. This design allows us to uncover a causal estimate of the value that individuals place on courts employing legal reasoning that they support or oppose judges using.

Figure 2 presents the differences in support for the Supreme Court’s decision by treatment condition. We treat the condition where respondents received two principles they *ex ante* rated as important (*Both Important*) as the baseline; this helps us assess the consequences to the Court of relying upon principles that have greater or lesser degrees of support among the public. Our findings reveal that principles of judging shape evaluations of the cases at hand in substantively impressive ways. Compared to respondents exposed to two principles that they *ex ante* rated as important, respondents exposed to two principles they viewed as unimportant were 19.6 percent ($p < 0.04$, 95 percent confidence interval 1.1–38.2) less likely to express support for the Court’s decision. Respondents in the *Mixed Importance* group (one important and one unimportant principle) express 13.7 percent less support than the *Both Important* group ($p < 0.01$, 3.9–23.5). Respondents in the *No Justification Given* group similarly express 12.6 percent lower support for the Court’s ruling than those in the *Both Important* group ($p < 0.04$, 1.0–24.2), suggesting that using popular legal principles to justify decisions can boost support in comparison to providing no legal justification for these decisions. Our results are consistent when analyzing the

³⁴As evinced by the *New York Times* stories that we read that discuss Court decisions, coverage of these rationales is generally more detailed than what we provide in our prompts.

³⁵There are a variety of other important ways in which legal principles are invoked in the real world that we do not study with our design. We discuss future opportunities to study these dynamics in more detail below.

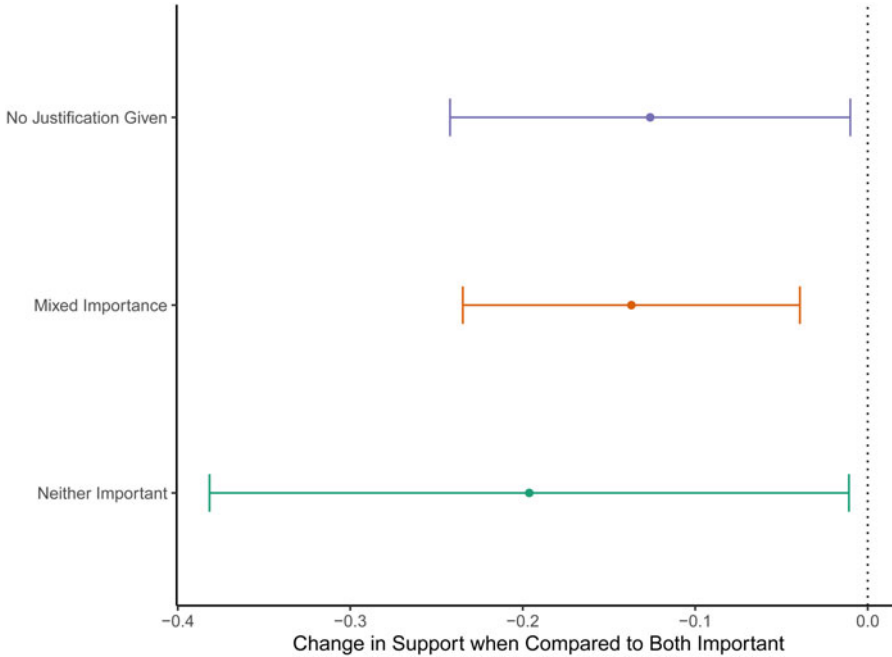


Figure 2. Legal principles and support for court rulings.

data in a regression framework with respondent-level covariates, including the number of principles a respondent supported *ex ante* and demographic characteristics (see Tables A-15 and A-16).³⁶

These results are substantively impressive when benchmarked against the role individual ideology plays in shaping attitudes toward these decisions. In the *Luis* prompt, no distinguishable differences emerged in support for the decision across ideologies; in the *Town of Greece* prompt, liberal respondents were about 40 percentage points less supportive of the outcome than non-liberals. Thus, in certain cases without strong ideological divisions, like *Luis*, pre-existing support or opposition to legal principles explains considerably more variation in attitudes toward the case than ideology. But even in a case like *Town of Greece* with substantial ideological divisions, our regression results indicate that the effect of employing two principles the respondent *ex ante* supported is equal to roughly one-quarter to one-third of the effect of respondent ideology (see Table A-15). This illustrates that pre-existing views on how judges use legal principles have a substantively important impact on evaluations of case outcomes.³⁷

We also see suggestive evidence that the invocation of more popular principles is associated with higher perceptions of judicial legitimacy (Table A-18). Compared to when no justification is given, perceptions of legitimacy are higher when the respondent thinks both the principles that justified the decision were important.³⁸

³⁶We find substantively similar results with an outcome variable measuring respondent support for the *reasoning* of the decision, further illustrating the importance of the legal principles in shaping public evaluations of cases (see Table A-17).

³⁷The large standard errors in our estimates preclude us making strong claims about the magnitude of our effects; future research on this can help shed more light. We note, however, that the directionality of the effect is consistent with Krewson and Owens (2023), who find that views on judicial philosophy affect attitudes about hypothetical cases on more salient issues.

³⁸We also find no significant differences between the *Mixed* and *Neither* conditions and no justification. Future research should further investigate the consequences of using principles for evaluations of legitimacy.

4. Implications and discussion

In this paper, we show that the American public holds attitudes toward how judges apply legal principles when making decisions. Our nationally representative survey reveals that members of the public have measurable attitudes about judicial principles, and that these views map onto attitudes about the proper use of traditional and non-traditional principles shared by political elites. Importantly, a clear political dimension shapes these attitudes, with liberals considerably more supportive of the use of non-traditional legal principles in judicial decision-making than conservatives. This association with ideology is conditional, with the split greatest for respondents with high knowledge of the Court. We find that these attitudes are consequential, as individuals critically evaluate the principles that judges employ in case decisions in light of the principles they themselves value.

Our findings provide important new insight into the relationship between the American public and the courts. First, our findings illustrate the connection between politics and attitudes toward the American judiciary. This shows the consequences elite discussion of politics in the judicial context can have and accords with scholarship that has shown the politicizing effects of elite rhetoric in shaping attitudes toward the Court (Clark and Kestel, 2015; Sen, 2017; Rogowski and Stone, 2021). Second, our study helps provide insight into the particular nature of public opinion toward the courts, which are viewed in a uniquely positive light when compared with other political figures. While research by Gibson and Caldeira (2011) and Farganis (2012) suggests that the American public values principled legalistic justifications for decisions, there has been little empirical evidence as to what these principles might be. The results from our study provide evidence that the public holds views over particular legal principles, providing insight into the specific criteria the public uses to evaluate judicial behavior.

Our findings also shed light on the strategic incentives judges consider when using legal principles to frame their opinions. Our results indicate that the Court may be able to use legal principles to secure support for its rulings among those who might otherwise oppose them. This is conditional, however, on the Court choosing those principles that the American public actually supports being used. Indeed, if the Court justifies its decisions in terms of unpopular principles, it risks decreasing support for its decision. This suggests that while the Supreme Court can generate support for its decisions through the use of seemingly apolitical legal principles, its success depends on the legal principles it chooses to espouse. Given that the traditional principles are broadly popular with the American public, it is not surprising that both liberal and conservative legal elites continue to pay fealty to them in their opinion writing.³⁹

Nevertheless, it is important to note that judges are constrained by real-world conditions in their ability to credibly invoke these popular principles as justifications for their decisions. For example, opinions that overturn a major Supreme Court precedent (e.g., the *Dobbs v. Jackson* decision overturning *Roe v. Wade*) would struggle to appeal to *stare decisis* as core legal principle driving the decision. This highlights the constraints judges face in justifying their decisions to the public and the practical consequences for how opinion language affects the public's evaluations of Court decisions.

Our results also speak to a literature that has challenged the long-held view that Americans' attitudes toward the judiciary's legitimacy are insulated from their views toward particular decisions (e.g., Swanson, 2007; Bartels and Johnston, 2013; Christenson and Glick, 2015). In particular, we show how legal principles can be an important vehicle through which evaluations of Court legitimacy respond to individual decisions the Court makes. Beyond politics, we find that Court legitimacy is susceptible to changes as a result of individuals' support or opposition to the legal principles contained in decisions. We thus show the American public places a value on the legalistic aspects of a Court decision, similar to scholarship showing that the public values

³⁹These insights complement research showing that views over judicial philosophies have implications for acceptance of nominees (Krewson and Owens, 2021) and decisions (Krewson and Owens, 2023).

procedurally fair decision-making (Baird and Gangl, 2006) and responds negatively to game frames (Hitt and Searles, 2018).⁴⁰

Supplementary material. The supplementary material for this article can be found at <https://doi.org/10.1017/psrm.2023.53>. To obtain replication material for this article, <https://doi.org/10.7910/DVN/X5PCNJ>

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⁴⁰See Appendix Section 1.17 for further discussion.

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