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# Preferred Institutions: Public Views on Policy

Shawn Christopher Fettig  
*University of Wisconsin-Milwaukee*

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**PREFERRED INSTITUTIONS:  
PUBLIC VIEWS ON POLICY**

by

Shawn C. Fettig

A Dissertation Submitted in  
Partial Fulfillment of the  
Requirements for the Degree of

Doctor of Philosophy  
in Political Science

at  
the University of Wisconsin-Milwaukee

August 2017

## ABSTRACT

### PREFERRED INSTITUTIONS: PUBLIC VIEWS ON POLICY

by

Shawn C. Fettig

The University of Wisconsin-Milwaukee, 2017  
Under the Supervision of Professor Sara C. Benesh

In this dissertation, I ask why people might prefer one institution of government (courts, legislatures, executives) over another to handle certain issues. Previous research has focused on legitimacy of the courts, whether institutions can legitimate policy, and how public opinion is thus informed. This research is invaluable in understanding support for and influence of specific institutions, but this only gets us so far. We still do not know *why* people might feel that one institution is more legitimate than another to handle policymaking on a specific issue. Here, I begin to examine this question arguing that institutions act as source cues to individuals and that those individuals evaluate the appropriateness of institutions to handle issues by considering institutional design (majoritarianism v. countermajoritarianism), politics (political v. nonpolitical institutions and issues), trust, and regret/disappointment. In short, I suggest that numerous factors play into an individual's preferences for one branch to handle certain issues and that these factors have to do both with beliefs about the institution(s), and perceptions of the issue(s).

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# CHAPTER I

## INTRODUCTION

Up to now, extant literature in the area of policy acceptance has been severely limited in its ability to inform us about how institutional and issue structure can inform levels of acceptance. Here, I will do so, examining specific characteristics of policymaking institutions and issues, positing that we can make better policy, conceptualized as being more widely accepted by the general public, when we know these things. In doing so, I question the traditional legitimacy index that has been utilized to explain judicial mechanisms of legitimating policy. I argue that the index is too broad, including variables that measure both short- and long-term legitimacy, when it should be exclusively measuring long-term, diffuse support. Additionally, I expand the body of research in this area by applying this legitimacy measurement to the executive and legislative branches, as well. In addition, I argue that respondents have a preference over which institutions handle certain issues, that they hold a preference about which institution should be *best-suited* to make policy in certain areas, and that this informs their level of acceptance of policies emanating from institutions. As such, I examine those variables that predict ranking, which is conceptualized as an institutional preference. Finally, I take these findings and apply them to policy acceptance, arguing that legitimacy and preference, along with other important considerations (to be discussed in Chapter II), impact and inform public acceptance, to varying degrees. In doing so, this project provides the legitimacy and acceptance literature with a large step forward in our understanding of what matters to institutional legitimacy (necessary to effective governance) and policy acceptance (necessary to stable government).

And so, in this dissertation, I examine the extent to which the public prefers one governmental institution to another to make policy in a given area. I suggest that issues may be deemed to be more or less “judicial,” or “legislative,” or “executive” by the public, and that, to the extent that the “right” institution acts, policy is more fully accepted. There has been much research that examines legitimacy of institutions (Gibson 1989; Gibson and Caldeira 1995; Gibson, Caldeira, and Spence 2003; Tyler 2006; and many others), the ability of an institution to legitimate (Gibson 1989; Mondak 1994; Gibson and Caldeira 2009), what drives the acceptance of policies (Kramer 1975; Suh and Han 2003; Nie and Wyman 2005; Olson, Cadge, and Harrison 2006), and preferences over which level of government (local, state, or national) should handle certain issues (Schneider and Jacoby 2003). Additionally, in his research examining respondent reactions to different governments in a federal system (local, state, and federal), Arceneaux (2005) argues that individuals have preferences over which form of government should handle issues based on which government they believe to be responsible for the issue and evaluations of that government’s job performance. No research, however, examines the idea that individuals may have preferences over which branch of government should make policy in certain areas. I do so here with this dissertation project.

The courts have often been viewed as strong policy legitimators, given their consistently high levels of public support (Hibbing and Theiss-Morse 2002; Marshall 1989), and their ability to legitimate policies exceeds Congress’ or the President’s’ (Hoekstra and Segal 1996; Franklin and Kosaki 1989; Stoutenborough, Haider-Markel, and Allen 2006; Clawson, Kegler, and Waltenburg 2001). Empirical support for *why* courts are different in this regard, however, is lacking. Indeed, previous research has not considered the degree to which the public views the courts as the “right,” the “best,” or the “most authoritative” decision maker to make policy and

whether that determination differs across issues. Instead, most of the extant research would lead us to believe that courts are always most preferred (and Congress always least preferred). As a result, courts are also uniformly expected to more strongly influence public opinion (Mondak 1991; Mondak and Smithey 1997), and court policies are expected to be greeted with higher (indeed, the highest) levels of legitimacy. But, given the backlash against the courts for stepping into some policy debates (Schacter 2005), and the use of court involvement in some issues as fodder for political campaigns (see, for example, Healy 2005), we might expect variation across people and issues over the extent to which courts can function as policy legitimators. It may well be that the public holds opinions not only over the resolution of certain issues, but also over which institution of government is best-suited to make decisions in a given issue area, and those notions, in turn, may affect the degree to which an institution can function as a legitimate policy maker, let alone a policy legitimator, directly influencing public acceptance of a policy.

As we can see, legitimacy, and policy legitimation, has been tied to the institution, with the general consensus being that the courts can legitimate any policy more than the legislative or executive branches can, without regard to the issue at hand. My theory, however, is grounded in the notion that the policymaking source (here, the institution) may have the ability to influence policy acceptance and, further, that part of an individual's evaluation of the source<sup>1</sup> might actually be an evaluation of how suitable the institution is to make policy in a given area. Suitability of the institution, in turn, may also depend on an individual's perception of the issue itself. If an issue is considered to be "political," an individual might believe that its resolution is best left to the institutions associated with politics (legislatures and executives). If the issue

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<sup>1</sup> Much research, usually in psychology, suggests people are influenced both by information they receive and the source from which they receive it (see, e.g., Chaiken 1980; Birnbaum and Stegner 1979; Huckfeldt 2001). Mondak argues, for example, that source credibility can drive opinions on a policy (in low information contexts), while it is only part of the evidence for decisions involving high degrees of personal relevance (or for those holding high levels of information) (Mondak 1990, 1993b).

involves rights claims, perhaps the courts, seen as above politics and as countermajoritarian, are perceived to be the appropriate institution from which to seek redress (Gibson and Caldeira 2009).

Policy acceptance, on the other hand, has been examined primarily at the *issue* level, without concern for the institution making the policy. This research has sought to explain characteristics of an issue that may influence how well the public accepts policy related to the issue, but it has not explicitly considered the idea that institutional preference over issue resolution may also matter.<sup>2</sup>

It seems plausible that people hold beliefs that certain institutions should not be handling questions on certain policy issues, or in certain policy areas. There are numerous examples of survey respondents expressing preference for one branch over another to handle certain issues. For instance, in late 2003, the Supreme Court of Massachusetts's ruling in *Goodridge v. Dept. of Public Health*<sup>3</sup> mandated that the state legally recognize same-sex marriages. This decision brought an unprecedented degree of national attention to the issue of gay marriage and much debate ensued. Not long afterward, President Bush entered the fray by advocating an amendment to the U.S. Constitution that would define marriage as a union between a man and a woman. In his 2004 State of the Union address, he said, "If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional

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<sup>2</sup> Other factors considered by the literature on policy acceptance include salience (May 1986; Grosskopf and Mondak 1998), religion (Olson, Cadge, and Harrison 2006); ideology (Kramer 1975), the degree to which a policy benefits a majority (Baumgartner and Jones 1993; Ingram, Schneider, and DeLeon 2007), or threatens other groups (Hetherington and Globetti 2002), and the level of controversy and incivility surrounding the issue (Nie and Wyman 2005; Mutz and Reeves 2005). My survey also controls for these factors.

<sup>3</sup> 798 N.E.2d 941 (Mass. 2003).

process. Our nation must defend the sanctity of marriage.”<sup>4</sup> Shortly thereafter, the proposed amendment was introduced in both chambers of Congress, only to fail in each.

Not all state policy followed President Bush’s sentiment, but, by 2008, 45 states had instituted some form of restriction on same-sex marriage. Some of these were passed by ballot initiative, while others were passed in the state legislatures. Table 1 shows how each state in the United States came to offer same-sex marriage benefits. Initially, judicial action seemed to drive same-sex marriage recognition, however, over time, that pattern dissipated. Instead, judicial action seems to have been the catalyst for the earliest state adoption of same-sex marriage recognition, followed by a string of recognition via legislature and referenda. More recently, however, court intervention picked up again. In 2014, the federal circuit courts began hearing appeals and overwhelmingly overturned state bans on same-sex marriage. And, in late 2014, the United States Supreme Court agreed to hear and decide on the issue of whether or not states can constitutionally ban same-sex marriage, finally finding a constitutional right to same-sex marriage that cannot be denied by any of the states in June 2015.<sup>5</sup> In the end, on the issue of same-sex marriage, all three branches of government played some role in expanding or limiting same-sex marriage rights in the United States.

[Insert Table 1 Here]

The initial run of judicially conferred same-sex marriage rights, followed by positive legislative intervention is interesting, though, in that it might suggest that the judicial branch acted as a catalyst for legislators or that people and organizations began to push for these rights via legislative enactment, perhaps due to concerns over the legitimacy or acceptability of the policy coming from the judiciary. Indeed, a 2005 ABC News/Washington Post poll found that

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<sup>4</sup> Retrieved from [http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext\\_012004.html](http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext_012004.html) on June 27, 2014.

<sup>5</sup> *Obergefell v. Hodges* (576 U.S. \_\_\_)

40% of respondents felt that the state courts should handle the issue of same-sex marriage, while 45% felt that this issue was best left to state legislatures.<sup>6</sup> By 2009, a Quinnipiac University poll found that 43% of respondents felt that legislatures should handle the issue of same-sex marriage, and only 25% felt that the courts should.<sup>7</sup> While it is difficult to extrapolate any meaningful inferences from this information without further analysis, it is fair to say that when it comes to the issue of same-sex marriage, the public seems to deem to prefer the legislature make policy in this area. These differences occur in other issue areas as well. For instance, when the United States Supreme Court resolved the 2000 presidential election, only 24% of respondents thought the issue should be left to either the U.S. Congress or Florida legislature, while 70% thought the courts were the “right” actor (Gallup 2000).<sup>8</sup> Likewise, in 2005, the country was captivated by the fate of Terry Schiavo, a Florida woman in a persistent vegetative state. The question facing the family was whether or not to end life support, and it became an issue with national dimension when Congress attempted to legislate a solution. At that time, a CBS News poll reported that 37% of respondents felt that the courts should be involved in resolving the issue, while only 13% felt that Congress should intervene. While a majority of the public felt that the government had minimal, if any, jurisdiction over the issue, they did see it as more appropriate for resolution by the courts.

The conflict may also exist among the branches of government, with different branches claiming to be the best-suited to make decisions, or actually making decisions that are in direct conflict with the decision(s) of another branch of government. On the issue of closing Guantanamo Bay, Americans have consistently shown a preference for keeping the detention

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<sup>6</sup> Retrieved from <http://www.pollingreport.com/civil2.htm> on June 27, 2014.

<sup>7</sup> Ibid.

<sup>8</sup> Retrieved from <http://www.pollingreport.com/wh2post.htm> on June 27, 2014.

facility open.<sup>9</sup> At the same time, Congress and President Obama have had a public disagreement about the future of the facility, with the President calling for the closing of the facility, and Congress having instituted a congressional ban on transferring detainees to the United States.<sup>10</sup> And, on the issue of online taxation, Americans are divided, with Gallup<sup>11</sup> finding that 57% of survey respondents oppose requiring states to collect sales tax from online sales. Here, the United States Supreme Court has held<sup>12</sup> that merchants need not collect online sales tax from sales in states in which they do not have a physical presence. The United States Senate, on the other hand, passed the Marketplace Fairness Act in 2013, that would require online retailers to collect sales tax for out-of-state sales. While the bill ultimately died in the House of Representatives, the conflict between branches is evident. Indeed, there is often conflict between the branches of government on important issues.

This recent poll data suggests that the public may deem some issues to be more appropriately resolved by the other branches. We might expect, then, that the public will be more willing to accept policies emanating from the “right” institution – the institution that most people prefer to handle the policy. Policy acceptance, in this view, is not a simple story about the court’s ability to enhance acceptance due to its increased legitimacy. Instead, the ability of the institution to legitimate policy and enhance acceptance may be directly related to the public’s view of which institution is best-suited to do so in the particular area of policy in which it is working. The purpose of this dissertation is to begin to examine this phenomenon.

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<sup>9</sup> In 2007, Gallup found that 53% of survey respondents supporting keeping Guantanamo Bay open. In 2014, that number had risen to 66%. Retrieved from <http://www.gallup.com/poll/171653/americans-continue-oppose-closing-guantanamo-bay.aspx> on June 27, 2014.

<sup>10</sup> Retrieved from <http://www.wsj.com/articles/obama-weighs-options-to-close-guantanamo-1412899358> on June 27, 2014.

<sup>11</sup> Retrieved from <http://www.gallup.com/poll/163184/americans-especially-young-oppose-internet-sales-tax.aspx> on June 27, 2014.

<sup>12</sup> *Quill Corp v. North Dakota* (504 U.S. 298).



In Chapter II a theoretical foundation is provided about institutional legitimacy, institutional preference, and policy acceptance. Legitimacy has been studied exhaustively, but almost exclusively as it pertains to the judicial system. This is due to the fact that the courts have no enforcement power of their decisions, as such relying on the other branches of government to implement and enforce its decisions. If members of the other branches of government do not do so, and/or if the public, en masse, decides to ignore the court's decisions, then the power of the judicial system evaporates. Institutional legitimacy is certainly important to all branches of government; however, Congress and the presidency are constitutionally constructed in such a way that make it appear to be more accountable (i.e., elections), so inhabitants of these institutions can be removed from their offices if the public is unsatisfied with them. Additionally, Congress and the presidency have enforcement mechanisms that the federal courts do not, meaning that the courts, and their decisions, are, arguably, beholden to the goodwill and acquiescence of the public in unique ways. Within this context, then, it takes no stretch of the imagination to consider that the courts are especially sensitive to the shifting tides of legitimacy in ways that Congress and the presidency are not. Therefore, legitimacy in the institution is viewed as critical to the federal judicial system's power, but it is also important to examine legitimacy as it pertains to Congress and the presidency. Policy acceptance is tied to legitimacy, in that increased legitimacy feeds increased acceptance of policies (Mondak 1992). This is regardless of the institution making policy. As such, legitimacy, and our understanding of it, is important to all branches of American government.

Chapter III focuses on comparative legitimacy of the three American institutions of government, drawn from legitimacy literature that has been defined almost exclusively within judicial scholarship. Legitimacy theory involves the normative idea that an institution has

authority to make decisions (Gibson 2008). As previously mentioned, policy acceptance has been tied to institutional legitimacy (Gibson, Caldeira, and Spence 2005), as has the fairness of the process (Tyler 1990; 2006). Therefore, it is important to understand how individuals feel about the branches of government as well as how individuals perceive the policymaking process if we want to understand how well certain types of policies will be received. Indeed, enhanced compliance is necessary to any functioning government. The theoretical premise accepted here is that legitimacy influences acceptance, and acceptance influences compliance. Steps are taken in Chapter III to determine which variables influence legitimacy for each of the three branches of American government. Further, Chapter III deconstructs the established legitimacy index in an effort to ensure that we are measuring what we say that we are measuring when we examine legitimacy. A careful analysis of each of the variables is conducted in pursuit of a more perfect index of legitimacy that reflects only long-term support in the institution(s).

Chapter IV focuses on institutional preference and those factors that matter to respondent preference of which institution should handle which policy, including institutional legitimacy and authority to make policy in certain issue areas. And, Chapter V examines the most important factors to policy acceptance, which has been conceptualized as policy legitimacy (Mondak 1992). We already know that people “like” the courts more than the legislative and executive branches. We know that this is due, in part to the fact that the courts are often seen to be less conflictual and more fair in their decision making processes (Benesh 2006; Hibbing and Theiss-Morse 2002; Tyler and Rasinski 1991). We also know that people vary in their acceptance of policies, based on certain aspects of the policymaking process (Hibbing and Theiss-Morse 1995; 2002). Low acceptance can strain compliance, posing a challenge for democracy. Chapters IV and V unravel the mysteries of which processes influence institutional preference and policy

acceptance in what ways. Understanding this can help us to craft better policy, by virtue of adjusting the process by which we make those policies. The normative implications for democracy cannot be understated. Efficiency is enhanced and waste is reduced when compliance is high. To wit, high compliance may reduce lawsuits and other action to undo unwanted policies. Also, higher compliance means less enforcement intervention is required, pulling less on already-strained resources. At its most basic, high compliance portends a more content populace. In order to get there, however, we must first understand the components that matter to acceptance – chiefly, legitimacy and preference (rank). This is the purpose of this dissertation.

**Table 1: Same-Sex Marriage Legality, by State, Year, and Institution**

Table 1. State Same-Sex Marriage Benefits, by Year and Branch

	Year	Branch
Massachusetts	2003	Judicial (State Court)
Connecticut	2008	Judicial (State Court)
Iowa	2009	Judicial (State Court)
Vermont	2009	Legislative
New Hampshire	2010	Legislative
<i>District of Columbia*</i>	2010	Legislative
New York	2011	Legislative
Washington	2012	Legislative → Referendum
Maine	2012	Referendum
Maryland	2013	Legislative → Referendum
California	2013	Judicial (State Court) → Legislative
Delaware	2013	Legislative
Minnesota	2013	Legislative
Rhode Island	2013	Legislative
New Jersey	2013	Judicial (State Court)
Hawaii	2013	Legislative
New Mexico	2013	Judicial (State Court)
Oregon	2014	Judicial (Federal Court)
Pennsylvania	2014	Judicial (Federal Court)
Illinois	2014	Legislative
Indiana	2014	Judicial (Federal Court)
Oklahoma	2014	Judicial (Federal Court)
Utah	2014	Judicial (Federal Court)
Virginia	2014	Judicial (Federal Court)
Wisconsin	2014	Judicial (Federal Court)
Colorado	2014	Judicial (State Court)
Nevada	2014	Judicial (Federal Court)
West Virginia	2014	Judicial (Federal Court)
North Carolina	2014	Judicial (Federal Court)
Idaho	2014	Judicial (Federal Court)
Alaska	2014	Judicial (Federal Court)
Arizona	2014	Judicial (Federal Court)
Wyoming	2014	Judicial (Federal Court)
Montana	2014	Judicial (Federal Court)
South Carolina	2014	Judicial (Federal Court)
Florida	2015	Judicial (Federal Court)
Remaining States	2015	Judicial (Federal Court)

\*District of Columbia is included, because it is not bound to any state law and, therefore, can act as its own state



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## **CHAPTER II**

### **THEORY AND METHODOLOGY**

In this dissertation project, I examine policy acceptance, specifically, those institutional and issue-related factors that might influence public acceptance of policies. Policy acceptance may hinge on many factors; however, I argue that characteristics of both the institution making the policy, and the issue itself, impact public acceptance of the policy. In this context, then, there may be an institution that is “best-suited” to handle certain policies. The “best-suited” or “right” institution is the one that embodies the institutional characteristics necessary to process certain policies in such a way as to maximize public acceptance of those policies. And, this may change dependent on those characteristics. I argue that different institutions may be the “right” institution to handle certain policies due to institution- and issue-level characteristics that are examined here. The “right” institution, then, is conceptualized as the one having the authority to make policy on a particular issue. And, as such, it has legitimating capacity in that issue area; it has the ability to enhance acceptance of that policy (Tyler 2004). When individuals feel that an institution has legitimacy, they imbue that institution with a certain authority, and they are willing to acquiesce to that authority (Tyler 2004). In fact, people feel a sense of responsibility to follow the directions of legitimacy authority, even when it runs counter to their own preferences (French and Raven 1959; Merelman 1966). It seems that as legitimacy increases, the need for coercion to obtain compliance decreases (Dogan 1992). This willful compliance with any given law is conceptualized here as policy acceptance.

I proceed by examining the influences of institutional legitimacy and institutional preference to handle certain issues, or policy areas, before examining three specific policies – same-sex marriage, online sales taxation, and the continued operation of the Guantanamo Bay

Detention Facility – and those factors that influence acceptance of these three policies emanating from each of the three branches of American government – the presidency, Congress, and the United States Supreme Court. First, in the next chapter, I examine institutional legitimacy across United States institutions, beginning with a well-established battery of survey questions that, taken together, has been used to create an index of judicial legitimacy. For the first time, this index is applied to all three branches of American government – the presidency, Congress, and the Supreme Court – in an effort to talk about institutional legitimacy in a more holistic way than has previously been done. In pursuit of a more perfect measure of legitimacy, this project disaggregates the traditional judicial legitimacy index and analyzes the appropriateness of each variable utilized in the index, ultimately offering a new, more precise, way to measure institutional legitimacy. Further, and more appropriate to the purpose of this dissertation, I examine the potential consequences of institutional legitimacy (Chapter III) and preference (Chapter IV), focusing on public acceptance of certain policies (Chapter V), emanating from the different branches of government, making the argument that the American public cares which branch of government makes which types of policies. This research takes the work of Hibbing and Theiss-Morse (2002) beyond an understanding that the American public cares about the processes (irrespective of policy preference) by which policies are made, and unpacks the question of which types of processes matter and why, suggesting that the unique constitutional structure of each branch lends itself to certain processes that may be more, or less, complementary to enhancing acceptance of certain types of policies. For instance, Congress’ constitutional duty to manage the country’s purse may naturally lead to increased public acceptance of monetary policy emanating from that institution more so than from one of the others. This provides the scholarship with a better understanding of policy acceptance, and may

offer a roadmap for policy- and lawmakers when crafting law. If good law reflects the will of the people, and receives high levels of public support, then any tools at the disposal of policy- and lawmakers in crafting policy to enhance acceptance of the policy are invaluable.

These tools can be related to process and/or role expectation. If the process matters to policy acceptance, then policymakers may be able to manipulate those processes to enhance public acceptance. For instance, if it matters to acceptance that fair processes are followed in making policy, then policymakers can highlight those processes to the public and/or take extra steps to engage fair processes more openly, relying on public feedback or solicit input from numerous experts. In addition, institutional characteristics may lend an institution some degree of authority or legitimating capacity more so than another institution that could inform the branch through which a policy may be funneled to maximize acceptance. This is tied to the fact that we know that low levels of satisfaction with the process by which policy is made can lead to less compliance with the policy, regardless of an individual's policy preference (see, i.e., Nye and Zelikow 1997; Scholz and Lubell 1998; Tyler 1990).

In this chapter a theoretical foundation is provided about institutional legitimacy, preference (conceptualized via institutional rank to make policy in certain areas), and policy acceptance. Legitimacy has been studied exhaustively, but almost exclusively as it pertains to the judicial system. This is likely due to the fact that legitimacy is especially important to the courts, which have no enforcement power of their decisions, relying on the other branches of government to implement and enforce their decisions. If members of the other branches of government do not do so, and/or if the public, en masse, decides to ignore the court's decisions, then the power of the judicial system evaporates. Institutional legitimacy is certainly important to all branches of government; however, Congress and the presidency are constitutionally

constructed to be more accountable, so inhabitants of these institutions can be removed from their offices if the public is unsatisfied with them. Additionally, Congress and the presidency have enforcement mechanisms that the federal courts do not, meaning that the courts, and their decisions, are, arguably, beholden to the goodwill and acquiescence of the public in unique ways. But, though legitimacy is viewed as critical to the federal judicial system's power, it is still important to examine legitimacy as it pertains to Congress and the presidency. Policy acceptance is tied to legitimacy, in that increased legitimacy feeds increased acceptance of policies, regardless of the institution making policy (Mondak 1992). As such, legitimacy, and our understanding of it, is important to all branches of American government.

In this project, institutional legitimacy refers to legitimacy for a specific branch of government, and policy acceptance refers to acceptance and support for a specific policy, irrespective of the institution making the policy. Indeed, legitimacy scholarship has used many different terms to talk about diffuse support – trust, confidence, support, legitimacy (see, i.e., Caldeira 1986; Tyler 1990; Caldeira and Gibson 1992; Hetherington 1998; Benesh 2006; Gibson and Caldeira 2009b) – but, these terms have very specific definitions that do not completely capture the essence of institutional legitimacy alone. Here, I will use the terms “institutional legitimacy” and “diffuse support” exclusively to talk about long-term, enduring support for an institution. Policy acceptance has also been referred to as policy legitimacy (Mondak 1992). To avoid confusion, when I talk about “policy acceptance,” I am referring to respondent willingness to abide by and *not* challenge a policy. More clearly, I assert that respondents accept policy when the process by which that policy came to be is perceived to have merit; to have come about “appropriately.” The necessity of this caveat highlights the difficulty that the scholarship has in discussing legitimacy and its role in democratic policymaking. It is incredibly important that we

start using appropriate, and exclusive, language when we talk about these concepts. To continue to do as we have done confounds our understanding of legitimacy, acceptance, and compliance. Here, I argue that institutional legitimacy and preference influence policy acceptance. This, in turn, influences compliance (which is not examined here). And, so, to understand policy acceptance, we must understand institutional legitimacy, and we must understand what drives preference for one institution to make policy over another. I turn now to a discussion of institutional legitimacy and what we know, thus far, about what influences legitimacy and how legitimacy behaves.

## **LEGITIMACY**

Institutional legitimacy, or diffuse support, has been conceptualized as enduring support for an institution, irrespective of its inhabitants or its outputs (Easton 1965), that is not influenced by short-term considerations or feelings. Instead, “diffuse support refers to a ‘reservoir of favorable attitudes or good will that helps members [of the public] to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants’” (Easton 1965, 273). Subsequent research has suggested that diffuse support is a form of “institutional loyalty; a support that is not contingent upon satisfaction with the immediate outputs of the institution” (Gibson, Caldeira, and Spence 2003b, 356). Furthermore, these same researchers argue that institutional loyalty precludes a loss of commitment to the institution even if it fails to make pleasing policy in the short-term. In essence, diffuse support (i.e., legitimacy) is a robust loyalty to an institution that is seemingly impervious to negative short-term perturbations. Specific support, on the other hand, is “satisfaction with the immediate outputs of the institution” (Gibson, Caldeira, and Spence 2003b, 356). Specific support can fluctuate, dependent on an individual’s agreement, or disagreement, with any given decision, act, or

behavior emanating from an institution. We can imagine that an individual may have a strong level of disappointment or dislike for any given presidential action (a lack of specific support), while still maintaining high regard for the office of the presidency (a high degree of diffuse support). We may support the position of a specific Supreme Court Justice on any decision (high degree of specific support), while still holding the Court, overall, in low esteem (low degree of diffuse support). And, as we already know<sup>13</sup>, Americans tend to like their own representative in Congress (high degree of specific support), but dislike Congress, as a whole (low degree of diffuse support).

In a sense, measuring legitimacy in the court system is easier to do, in that the institution is designed in such a way that we, as the public, rarely consider the inhabitants of the institution. This differs from Congress and the presidency. We do not elect Supreme Court Justices, so this insulates us from thinking about individual justices. And, when the Court does issue decisions, there may be some attention to the writers of the majority opinion (or the concurrences and dissents), but, largely, these decisions are referenced as products of the Court, and not an individual person. This stands in stark contrast to Congress and the presidency, wherein we elect our representatives, and the person inhabiting the office at any given time embodies the institution for that period of time. This makes it difficult for us to differentiate between the office and the inhabitant of the office sometimes. Often, when we measure any form of “legitimacy” for Congress and the presidency, we rely on measures of job approval; however, this is a short-term measure of support that is directly associated with a person, or persons, and not the institution. Here, I apply the traditional legitimacy index, as it has been utilized with the courts, to Congress and the presidency, altering some of the questions in an attempt to tap into

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<sup>13</sup> Since 1994, Gallup has periodically asked survey respondents how they feel about Congress and how they feel about their own representative. See, i.e., <http://www.gallup.com/poll/178487/americans-member-congress-not.aspx>

diffuse support, true institutional legitimacy, or commitment to the governmental role of the institution for these branches of government. In doing so, we can certainly draw from the information gleaned from the judicial legitimacy literature, expecting that, perhaps, these findings may also be important to the other two branches of government.

We know that, lacking adequate resources, people rely on cues or shortcuts to fill their informational gaps, and when they do, the source of the information often influences the perception of the information (Chaiken 1980; Delli Carpini and Keeter 1997; Mondak 1993a, 1993b; Birnbaum and Stegner 1979). Depending on how strongly attitudes are held about the source, and in what direction, source effects can positively or negatively impact perceptions of policy (Mondak 1993b). Hence, the same policy emanating from different institutions might be perceived differently by the public. Mondak (1990), for example, considers policies about student speech and search and seizure in an experimental design, varying the institution to which the policy is credited from the Supreme Court, to a high school principal, to the police, finding that, when the same policy is attributed to the Court, the policy gains higher levels of approval than when the policy is attributed to either of the other two actors. Other scholars find similarly (Clawson, Kegler, and Waltenburg 2001; Hoekstra and Segal 1996; Stoutenborough, Haider-Markel, and Allen 2006; Grosskopf and Mondak 1998; Mondak 1994). Additionally, it appears that the Court is able to confer legitimacy even among those individuals that oppose the Court's decision, suggesting that the Court may also possess a persuasive function that leads to policy acceptance (Mondak 1994).

While the ability of the courts to confer legitimacy has been shown to be limited by salience, political context, attitudes toward groups, and the structure of public opinion (Hoekstra and Segal 1996; Franklin and Kosaki 1989; Stoutenborough, Haider-Markel, and Allen 2006),

previous research has not considered the degree to which the public views the courts as the “right,” the “best,” or the “most authoritative” decision maker to make policy in every issue. To do so, at minimum, we must be able to provide some comparative analysis of legitimacy for each of the three American lawmaking bodies – the judiciary, the executive, and the legislature. Indeed, I expect that the public holds opinions over which institution of government is best suited to make policy in a given issue area, and that those notions affect the degree to which an institution can function as a policy legitimator (influencing policy acceptance).<sup>14</sup> Legitimacy and its derivatives will play a role in those appraisals. Therefore, I expect that, as institutional legitimacy increases, so too does the extent to which a respondent prefers it (ranks it highly) to resolve a certain policy. In addition, I also expect that as legitimacy increases, so does the likelihood that acceptance of the policy will increase.

#### *Short- vs. Long-Term Evaluations*

Institutional legitimacy has been measured in many ways over time; however, almost all legitimacy indices have included some variation of survey questions that tap into levels of trust, confidence, willingness to do away with the institution, perceptions of whether the institution is mixed up in politics, respondent willingness to challenge a decision with which they disagree, and belief that the institution favors some groups over others. I will spend more time later in this chapter talking about how these questions have been used in the literature. For now, though, it is important to remember that a measure of institutional legitimacy, to be considered adequate, must be tapping into long-term sentiment toward the institution. As such, each variable included in a legitimacy index absolutely must be representing diffuse support for an institution. And, if it does not, then we are not able to say anything meaningful about legitimacy and, therefore, policy

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<sup>14</sup> It is certainly the case that the religious right, in its use of the pejorative “activism” label would argue that some issues should be kept from the courts. Justices on the Supreme Court itself often opine thusly (see, e.g., Justice Scalia’s dissenting opinions in *Atkins v. Virginia* or in *Lawrence v. Texas*).



acceptance. In fact, if we are not adequately measuring legitimacy, then the assumptions about legitimacy, and subsequent inferences drawn, that we have come to accept as truth may be, to put it bluntly, wrong. There is, at minimum, enough question about some of the oft-used variables that throws the veracity of the index into question. Specifically, I critique the inclusion of trust, confidence, whether the institution favors some groups over others, and whether the institution gets too mixed up in politics as inappropriate measures of diffuse support for an institution.

In a representative democracy, the people must trust those who govern them, and, hence, political scientists have frequently turned their focus to the study of that trust,<sup>15</sup> as an indicator of institutional legitimacy. Much of the research that examines trust in American politics suggests that trust is a measure of satisfaction with the current outputs of an institution, and not an enduring commitment or loyalty to an institution. In essence, most research eschews the idea that trust is an indicator of some reservoir of good will. This is a distinctly different conceptualization of trust than is used in the judicial legitimacy literature. This difference has been noted, and Citrin (1974) argues that political events and expectations, specifically policy dissatisfaction, have been the leading cause of any declining trust in American government. He warns that researchers should be careful to distinguish “dissatisfaction with current government policy positions, dissatisfaction with the outcomes of ongoing events and policies, mistrust of incumbent officeholders, and rejection of the entire political system” (987). This research suggests that the judicial legitimacy literature may be misrepresenting the role of trust in American government.

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<sup>15</sup> The terminology, of course varies from “trust” to “confidence” to “support” to “legitimacy,” but the attention paid by scholars has been continuous over many years. (See, i.e., Easton 1975; Caldeira 1986; Tyler 1990; Caldeira and Gibson 1992; Nye 1997; Hetherington 1998; Mondak and Smithey 1997; Benesh 2006; Gibson and Caldeira 2009a, 2009b; and many others).

While we know that the Courts enjoy a higher degree of trust and confidence than Congress or the presidency (Hibbing and Theiss-Morse 1998), we do not know very much about *why* people differentially trust these institutions. Research speculates that procedures have something to do with this, as the unliked Congress engages in public political combat (Hibbing and Theiss-Morse 1995) while the well-loved courts proceed in ways seen as procedurally fair and unbiased (Tyler 1990), but no empirical evidence has been brought to bear. Since Congress and the presidency, unlike the federal courts, rely on direct election, this low level of trust is seen as a challenge for democracy (Donovan and Bowler 2004; Putnam 2000). Positive assessments of government are grounded in trust (Miller 1974; Tolbert and Mossberger 2006), and increased trust in an institution is linked to increased confidence in that institution (Brehm and Rahn 1997). The analysis here goes further than just an examination of the influence of trust on legitimacy, seeking instead to truly determine what drives legitimacy and, within that context, what role short-term approval of decisions and personnel might have on that understanding.

Staton (2006) argues that judicial trust may be distinct from diffuse support altogether, and Mishler and Rose (2001, 38) describe trust as a “running tally” of evaluations of past governmental performance, in much the same way as Fiorina (1981) conceptualized party identification. They (2001) find that institutional trust is influenced by performance, rather than cultural factors, such as interpersonal trust in a society, or the state of its civic culture. Trust grows with positive evaluations of government performance. Additionally, Keele (2005) finds that trust is influenced by a number of factors, including presidential approval, economic performance, congressional approval, scandal, and crime – all short-term measures of satisfaction. Keele also finds that partisans trust government more when their own party is in power, suggesting that trust is linked to expected outputs or policies dependent on those making

them. Mutz and Reeves (2005, 1) make a further point by noting that “incivility in public discourse” degrades trust in government, when they examine television talk-show shouting and its impact on viewers. Together, these findings suggest that evaluation of incumbents, as well as short-term indicators of satisfaction, strongly influence levels of trust in government.

Other short-term retrospective explanations have also been tied to gains and declines in government trust. In a text dedicated to the examination of what we know about trust in government, numerous authors find government inefficiency, financial irresponsibility, and poor spending decisions to be strong determinants of declining trust. Each of these suggests that recent performance of government is linked to trust in that government (Nye 1997). In fact, Nye (1997) writes that, when individuals are queried about trust in government, their evaluations of government are driven by evaluations of performance, and not by a general, encompassing attitude about the scope of government or its institutions.

Some authors (Bok 1997, Lawrence 1997, and Mansbridge 1997) go further and suggest that, beyond just evaluations of performance, expectations of performance also drive trust in government. Some chapters examine specific events in American history, such as the Vietnam War and Watergate, and suggest that these events may explain levels of trust in government (e.g., Lawrence 1997), and others point to party polarization as an explanatory factor (King 1997). Each chapter, though, argues that declines in trust in government are driven by evaluations of performance, as opposed to some long-term, institutional reservoir of good will. This runs strongly counter to judicial legitimacy literature, which implicitly argues that trust is one measure, of many, that, taken together, explain diffuse support for an institution (see, i.e., Gibson 1989; Caldeira and Gibson 1992; Gibson and Caldeira 1995; Gibson, Caldeira, and Baird

1998; Gibson, Caldeira, and Spence 2003a; Gibson, Caldeira, and Spence 2005; Gibson 2008; Gibson and Caldeira 2009a, 2009b).

It is not that we should not consider trust to matter in evaluations of government. We know that trust in government is influenced by, and, in turn, influences, perceptions of lawmakers and political offices. And, some research has found that trust is incredibly important to a strong democracy, since Congress and the presidency, unlike the federal courts, rely on direct election (Donovan and Bowler 2004; Putnam 2000). Indeed, low levels of trust challenge democracy, because trust has been linked to voter participation (Hetherington 1998, 1999), acceptance of policies (Suh and Han 2003), and compliance with laws (Tyler 1990; Scholz and Lubell 1998). However, trust ought not to be considered as a component of institutional legitimacy as it has (Gibson 1989; Caldeira and Gibson 1992; Gibson and Caldeira 1995; Gibson, Caldeira, and Baird 1998; Gibson, Caldeira, and Spence 2003a; Gibson, Caldeira, and Spence 2005; Gibson 2008; Gibson and Caldeira 2009a, 2009b; and many others) which is essential to the operation of the branches of government (specifically, the courts). If perceptions of the economy (Przeworski, Alvarez, Cheibab and Limongi 1996), scandals, crime levels (Chanley, Rudolph, and Rahn 2000), job approval (Hetherington 1998; Keele 2007; Mishler and Rose 2001), media behavior (Mutz and Reeves 2005), partisanship, and ideological congruence (Keele 2005; Rudolph and Evans 2005) all drive trust in government, and these are all decidedly short-term factors, then including trust in an index purporting to measure diffuse, or long-term, support seems to be less than desirable.

Further, Hibbing and Theiss-Morse (1995; 2002) make the argument that the American public has much distaste for the business of politics and, therefore, holds Congress and, to a lesser degree, the presidency in lower esteem than the Supreme Court, given the extent to which

politics drives decisions in those bodies. To be sure, it would appear that this belief about politicization reflects poorly on the institution; however, there is an argument to be made that it may be impacting approval of the inhabitants of an institution, which would be an indicator of specific support. It is not difficult to imagine that when people think about politics, specific politicians and other individuals come to mind, and there is evidence that we sometimes frame questions about politics within that context. Take, for instance, questions that The Harris Poll<sup>16</sup> asked of respondents in December 2000, following the disputed presidential election results in Florida. Respondents were asked:

“Thinking of the decisions made by the courts concerning the Florida election, do you believe that the decisions made by individual judges in Florida mainly reflect the political views of the judges or mainly reflect their impartial legal judgments,” and “Thinking about the decisions made by the courts concerning the Florida election, do you believe that the decisions made by individual judges in the Supreme Court mainly reflect the political views of the judges or mainly reflect their impartial legal judgments?”

Likewise, in the same year, a Reuters/NBC News/Zogby poll asked respondents if they felt that “the Supreme Court has maintained an objective balance or has it become too political?”<sup>17</sup> There is also evidence that individual members of Congress are held accountable for an environment that is “too political.” When Reuters/Ipsos asked respondents in May 2015 about this, 57% of respondents stated that Congress operates better “when the extremists on either side don’t have as much leverage.”<sup>18</sup> This focus on “extremists” within the institution, as well as a wide perception that these individuals negatively impact the institution, would lead us to believe that, perhaps, institutions are punished for the bad behavior of its inhabitants.

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<sup>16</sup> <http://www.pollingreport.com/wh2post.htm>

<sup>17</sup> Ibid.

<sup>18</sup> <http://www.reuters.com/article/2015/05/15/us-usa-congress-poll-idUSKBN000C120150515>

These findings suggest that, at minimum, respondents may be having some difficulty separating inhabitants of an institution from the institution when they think about the political environment of the institution. If this is the case, then questions about how political an institution is, as well as whether or not the institution favors some groups over others (meaning that the public perception is that the outcomes of the institutions seem to benefit certain groups over other groups), may not be tapping into pure diffuse support, or institutional legitimacy. At the least, this confusion deserves some examination and, so, I will consider these variables when determining short- vs. long-term evaluation of an institution.

Finally, I also take a closer look at the measure of confidence in an institution. Given that confidence and trust have been so often studied in tandem, sometimes even being used interchangeably (see, i.e., Easton 1975; Caldeira 1986; Tyler 1990; Caldeira and Gibson 1992; Dogan 1992; Nye 1997; Hetherington 1998; Mondak and Smithey 1997; Gibson and Caldeira 2009), it stands to reason that a critical look is necessary to parse the two concepts and determine which, if either, is actually measuring long-term sentiment for an institution. Additionally, some research has evidenced that disagreement with specific Court decisions reduces confidence in the Court, suggesting a short-term affect to Court behavior. While most legitimacy indices have included some measure of confidence in the institution (see, i.e., Caldeira 1986; Tyler 1990; Caldeira and Gibson 1992; Hetherington 1998; Benesh 2006; Gibson and Caldeira 2009a, 2009b), other research has been explicit that confidence in an institution should not be confused with institutional legitimacy (Citrin 1974). Further, Gibson, Caldeira, and Spence (2003b) argue that confidence taps into both short- and long-term sentiment for the courts, but that it is a much stronger indicator of specific, rather than diffuse, support. Subsequent research has borne this out, showing that even a dramatic loss of confidence does not translate to a subsequent drop in

legitimacy (Lipset and Schneider 1983). If extant research can reveal that confidence and legitimacy operate independently of each other and that a shift in confidence, even a dramatic one, does not alter legitimacy, then it is, at minimum, incumbent upon any legitimacy researcher to examine the efficacy of including confidence as a variable measure of institutional legitimacy.

I am not suggesting, however, that those shorter-term measures that have been included in the legitimacy index are of no worth. Indeed, I argue that both short- and long-term legitimacy (specific and diffuse support) are critical to the functioning of government. Dogan (1992) posits that a decline in trust and confidence, both being short-term indicators of support for an institution, can cause serious damage to the ability to govern. This is also true of valid long-term institutional legitimacy – a steady and persistent decline could lead to a governing crisis. The two concepts, though, do need to be understood, and evaluated, as distinct from each other. Moving forward, having the information we now have with the research provided here, we will be able to study institutional legitimacy more accurately. Chapter III tackles the questions about legitimacy outlined here. However, understanding legitimacy and those factors that influence institutional legitimacy are but just one facet of the necessary analysis to understand policy acceptance. As previously mentioned, institutional preference to handle certain issues is also important to understanding why individuals may be more accepting of policies emanating from one institution rather than another.

### **INSTITUTIONAL PREFERENCE**

Institutional preference to handle certain matters may help us to understand, not only which branches of government respondents prefer to handle certain policies, but also how policy can be made on certain issues to maximize acceptance. Conventional wisdom tells us that those things that are ranked higher are more preferred. Numerous public opinion and trade-based

polls<sup>19</sup> rank businesses, programs, people, universities, products, etc., with the higher ranked items being more highly valued. It follows then, that when respondents rank an institution higher than others to make policy in certain issue areas, they will, likewise, be more accepting of those policies emanating from that institution. Empirically, ranking is used in choice modeling to determine respondent preferences (Hanley, Mourato, and Wright 2001), as well as to establish expectations, which allows researchers to validate or challenge assumptions (Manski 2004). Here, I expect that institutional legitimacy and institutional authority will matter to rank of institutions to handle certain issues. These expectations are largely grounded in institution-level characteristics that inform respondent perception about the appropriate institution to handle particular issues. Specifically, given that institutional legitimacy informs acceptance and compliance, as explained earlier, I expect that respondent preference for a certain institution over another to make policy on certain issues to also matter to acceptance and, thus, compliance. In the same vein, I expect an increasing belief that an institution holds authority to make policy in certain areas to influence preference for that institution to make policy in those issue areas.

Rank-ordered logistic regression (Beggs, Cardell, and Hausman 1981) allows researchers to examine rank-ordering of preferences to determine what drives rank, and has been utilized in numerous research areas, including economics (Porter and Zona 1993), social psychology (Kamakura and Mazzon 1991), marketing (Chintagunta 2002), and sociology (Allison and Christakis 1994). Further, and specific to ranking institutions to make certain policies, Benesh and Fettig (2011) find that ranking matters to the Court on the issue of same-sex marriage, such that, the higher the rank, the more approving of the decision emanating from the institution. Given this extant research, the expectation here is that higher ranked institutions to handle certain policies will garner greater acceptance for the decisions they make on those policies than

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<sup>19</sup> See, i.e., <http://www.usnews.com/rankings> for numerous examples.



lower ranked institutions. As such, respondents were asked to rank each branch of government as to its appropriateness to make policy on three distinct issues. Specifically, respondents were asked to rank the institutions from *best-* to *least-suited* to make policy on each of the issues.

Chapter IV examines the implications and determinants of these rankings, wherein the primary dependent variable will be respondent ranking of institutions from *best-* to *least-suited* to handle each issue. It is these rankings that embody an institutional preference to make policy in certain issue areas.

### **POLICY ACCEPTANCE**

In examining what factors influence a respondent's acceptance of a policy (legalization of same-sex marriage, closing of Guantanamo Bay, and online taxation), I expect both institutional legitimacy and preference to matter. As previously mentioned, I define policy acceptance as the willingness to mitigate public challenges to, and enhance compliance with, a policy.<sup>20</sup>

We know that the threat of sanctions increases acceptance and compliance with policy (He 2005), and that "process matters" (Hibbing and Theiss-Morse 2001), specifically that when members of the public feel as if they have been actively heard in the policymaking process (Skogstad 2003; Wallner 2008), that the process was fair (Tyler 2001; Sunshine and Tyler 2003; Ohnuma, Hirose, Karasawa, Yorifuji, and Sugiura 2005; Machura 1998), and that their wishes were considered (Skogstad 2003; Smoke 1994), they are more likely to accept a policy. As these variables will be considered as drivers of institutional legitimacy, they will not be included in the policy acceptance models. Rather, any influence they may play in acceptance may be reflected in the predictors of institutional legitimacy. In addition, the perceived level of controversy

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<sup>20</sup> Policy acceptance has been referred to by many monikers, including policy legitimacy (see i.e., Hanberger 2003; Mondak 1994; Smoke 1994). While I do not intend to argue that the language here confounds distinct concepts, I will reference policy acceptance throughout this dissertation. This clarification is especially necessary when we know that legitimacy informs acceptance (Tyler 2006a, 2006b; Tyler and Darley 2000), and crosstalk will further confuse the discussion.

surrounding an issue impacts acceptance of policy on that issue, such that increased controversy tends to decrease acceptance (Nie and Wyman 2005).

However, the extant literature does not much pay much heed to the source of the policy, and the subsequent ability of that source to influence acceptance of its policies. There are, then, numerous institution- and issue-level characteristics that may influence policy acceptance. I examine these characteristics here.

In the American constitutional system, each of the three branches has specific “jobs,” as outlined in the Constitution, and, as such, I expect that people have constitutionally-based expectations about each institution (Petrie 1997). For instance, Congress is assigned the “power of the purse,” tasked with managing the country’s budgeting and finances, including taxation. The Supreme Court holds both original and appellate jurisdiction, and is expected to settle existing controversies between participants about United States law. And the President is constitutionally bound to command the country’s armed forces, make treaties, and appoint persons to specific governmental postings. In addition to these constitutional constructs, the institutions have evolved in such a way as to occupy more normative space in the American governmental system; space that is separate from functions outlined in the Constitution. More generally, the Supreme Court is tasked with protecting the Constitution (Barak and Fried 2002). Congress is expected to write laws that can withstand judicial review (Burbank 2004), while the President is expected to act in the national and public interest, focusing on building consensus across the branches (Smith 1981). The examination of these variables, conducted in Chapter II, is expected to explain institutional legitimacy, leading me to expect that as more legitimate institutions make policies, people are more likely to accept those policies (Tyler and Fagan 2008; Mondak 1990; Mondak 1993a; Mondak 1994; Tyler 2006a; Tyler and Darley 2000), which then

increases compliance (Tyler 1997; 2006a; 2007). Therefore, institutional legitimacy should drive policy acceptance.

A preference for a specific institution to make policy in certain issues areas should also matter to levels of policy acceptance. Examining respondent ranking of institutions as to its “suitedness” to make policy in each of the issue areas, I expect that authority and legitimacy will drive these preferences. Further, I expect that these preferences, driven by institutional legitimacy and authority, will also be important to policy acceptance.

The level of politicization of an issue<sup>21</sup> could be important to policy acceptance.

Politicization is tied to electoral politics. Remember, as mentioned earlier, the design of the Supreme Court insulates it from politicization, in that its members need not seek public favor to maintain their jobs. Congress and the presidency, on the other hand, are inherently political institutions, in that the inhabitants much stand for election at regular intervals, making them sensitive to public opinion. Politicization of an issue, then, happens when politicians seek to influence public opinion on an issue. Here, I am not interested in whether or not this is actually happening, but rather, whether respondents perceive an issue to have been politicized. For the purposes of this dissertation project, it does not matter if respondents believe politicization to be related to conflict between political parties or between institutions; only that they believe it exists. As a result, level of politicization is conceptualized only inasmuch as respondents believe that it exists on the three issues in the survey. While the court system in America is one of three branches of political institutions, it is often considered to be the least political, or non-political entirely, subject to no political accountability (Bickel 1986; Gibson and Caldeira 2009b; Choper

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<sup>21</sup> For each of the issues, respondents were asked, “Do you consider the issue of (same-sex marriage; online sales taxation; Guantanamo Bay Detention Facility’s operation) to be primarily: a moral/religious issue, a political issue, a social issue, an economic issue, an issue about rights? I make no theoretical argument that any of the issues are more or less political. Instead, I rely on respondents to determine this, based on their own perceptions.

1980). Federal judges are not subject to elections, the very presence of which politicizes (Bonneau and Hall 2009). Some argue that presenting and maintaining an image as an apolitical institution is important for courts to maintain and enhance their legitimacy (Clark 2011).

This does not mean that the courts do not consider the public's wishes. In fact, research has shown that the courts do tend to consider public opinion in their rulings (Hoekstra and Segal 1996; Flemming and Wood 1997; Hoekstra 2000; McGuire and Stimson 2004); however, this responsiveness is not tied to a judge's desire to curry favor for reelection and so may seem less political. And, most research also suggests that judges are informed more by a personal ideology than any other factor (Segal and Spaeth 2002). As compared to the elected branches, then, courts have more latitude to rule against the majority. Of course, the courts may be used to political ends by the elected branches (Gillman 2002; Whittington 2005). Political partisans may leave specific issues to the courts to avoid taking responsibility for a vote on the issue. Interest groups may advance agendas in the friendly courts to circumvent an unfriendly legislature (Whittington 2005). Additionally, the appointment process is politically driven (Scherer 2005), with the dominant parties seeking ends through the judiciary. Regardless of these possibilities, the institutional design of the federal courts is decidedly not political in the same ways as the elected branches.

Politics introduces conflict into a decisionmaking situation. We know from past research that conflict increases the level of discomfort for people and that the courts benefit by not displaying conflict publicly, unlike Congress and the President (Hibbing and Theiss-Morse 1998). Additionally, the decisionmaking process in the courts is widely perceived to be fair and unbiased (Tyler 1990; 2006a), precisely because individuals involved in the conflict have the ability to present their case and have it heard before the decision makers.

Issues can be politicized, though. Quite often, policy can be framed in terms that delineate sides or issues positions that are in opposition. For instance, advocates of same-sex marriage argue for equal rights, while opponents argue against “special rights.” When political elites become involved in framing the debate in this way, the issue becomes politicized.<sup>22</sup>

However, the extant literature supports two competing arguments, making it difficult to draw a clear expectation about how politicization will impact an individual’s perception of which institution should handle an issue. Given the levels of discomfort associated with the more political branches, we might expect that people would seek the less political branch, the courts, to address contentious issues. We might also expect, however, that people would assign political issues to a political branch, as political issues should be considered by politicians. I expect that perception of the politicization of an issue, that an issue is primarily about “politics,” will influence the extent to which an institution is perceived to be appropriate to its resolution which, in turn, will influence acceptance of the policy coming from that institution.

Countermajoritarianism, a characteristic of the American Constitutional design, could have both institutional- and issue-level influence: for example, an issue perceived to be about preserving rights may seem best resolved by an institution removed from majority influence. The concern that a majority may be able to impose its will on a minority and, in fact, tyrannize that minority, was considered in designing the American constitutional system (see, i.e., the *Federalist Papers* published in Madison 1961). Indeed, the judiciary was constructed with this in mind. Justices were to be appointed to life terms in order that they would remain insulated

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<sup>22</sup> When Republicans made same-sex marriage a platform issue in 2004, for example, campaigning against it and introducing state ballot initiatives across the country to prevent it, they were framing the issue in a political context (rather than a human rights context), such that the issue became ideologically charged and separable by partisanship. While this may fit within the responsible party government framework (APSA 1950) as the Republican Party establishes a clear position that allowed voters to determine which party was closer to their own ideals, it just as surely politicizes the issue.

from the politics of the legislature, and by extension, changes in public opinion (Murphy and Tanenhaus 1990; Mishler and Sheehan 1993). The courts are the only of the three branches in the American system designed in such a way that the minority may have as much access to it as the majority.

The countermajoritarian tendency, then, is built into the institutional design of the courts, and has been further embraced in the court's own rules (e.g., the rule of four). The countermajoritarian tendency is also apparent in the Court's outcomes and courts are often seen as protectors of minority rights and access (Gibson and Caldeira 2009b; Rosenberg 1991; Scheingold 2004; McClain and Stewart 2006).<sup>23</sup> While the ability of the courts to affect social change may be questioned (Rosenberg 1991; Scheingold 2004), the fact that they provide an avenue for the minority to be heard is one reason the judicial branch is considered to be countermajoritarian.<sup>24</sup>

In addition, the Bill of Rights was designed to protect against government action curtailing individual freedoms. Given that the federal courts interpret the Constitution (Barak and Fried 2002), they inherently have the opportunity to hold the government accountable for rights violations (Perry 1982). So, I expect that as an individual perceives an issue to address rights, that individual will be more likely to deem the courts to be the appropriate institution to address the issue. It follows, then, that when a decision on a "rights issue" is made by the courts, it is more likely to be accepted.

## METHODS

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<sup>23</sup>This depends heavily, however, on the ideological preferences of its members (Segal and Spaeth 2002) and is discussed in further detail below.

<sup>24</sup>Of course, this does not necessarily make the Court undemocratic given the extant executive and legislative checks on the court and the role of minority rights protection in democratic governments (Madison 1961). In fact, Whittington (2003; 2005) argues that the Court can be a friendly supporter of both Congress and the President, subject to public opinion via these institutions, mitigating countermajoritarianism.

Data for this dissertation was drawn from a specifically designed survey that was administered via Qualtrics, and using Amazon.com's MTurk platform to recruit survey respondents. MTurk allows researchers to "hire" respondents (MTurkers) to complete tasks online. Here, 1806 respondents were each paid \$0.60 to complete a specially designed quasi-experimental survey over the course of three weeks in May 2013. An online survey was deliberately chosen as the vehicle through which to gather response for a number of reasons. First, responses times are shorter with online survey than they are with mail surveys (Sheehan and McMillan 1999; Griffs, Goldsby, and Cooper 2003; McDonald and Adam 2003). Online surveys are also faster and less expensive than face-to-face surveys (Scholl, Mulders, and Drent 2002). Second, online surveys have much higher response rates (60%) than do telephone surveys (14%) (Rubin 2000). Given that time is important in any research project, but especially here, where it was important to gather information about policies prior to one (or another) branch of government settling the matter in real world time. For instance, had the issue of same-sex marriage been settled prior to the fielding of the survey, it may have confounded findings for the purposes of the project at hand. Certainly, at least on the issue of same-sex marriage, the debate had been a salient public policy issue for a number of years prior to the fielding of the survey, such that many respondents had probably already established a position on the issue. And, those positions may have evolved over time. Nonetheless, preferences about which branch of government should make policy on the issue would still remain the personal sentiment of each respondent. Finally, online surveys are preferable when certain conditions exist. When the researcher was strong methodological control over question ordering and presentation, online surveys provide an opportunity that is more difficult with other survey methods (Evans and Mathur 2005). The survey for this project required that respondents 1) move certain components

to rank institutions, 2) be “taken” to different sections of the survey based on expressed preferences, and 3) be randomly selected to receive one of eighteen vignettes outlining policy on an issue area emanating from one of the institutions that ran counter to an earlier expressed policy preference. These nuances are best handled by an online survey that can mechanically handle these process challenges. Online surveys are also preferable when interviewer interaction is not necessary (Evans and Mathur 2005). Here, no interviewer interaction was required or necessary. In fact, given some of the complex methodological requirements, interviewer interaction could have confused the respondent more so than the clearly defined requests outlined in the online survey format. Indeed, Duffy et al. (2005) argue that, in some cases, social desirability bias (the tendency of some respondents to seek to please their interviewers) is so strong and potentially damaging to research outcomes that online surveying may be a better avenue with which to survey individuals. Finally, fewer and fewer households have landlines in our contemporary era, making it difficult to ensure an adequate cross-section of the American public is sampled with the usual random digit dial.

Hence, an online survey was the best way to gather information necessary to this dissertation project, and Amazon’s MTurk presented an unique opportunity to reach a national, representative audience. While research has shown that MTurkers are slightly more liberal and young (Berinsky, Huber, and Lenz, 2012), other research has identified MTurkers as “slightly more demographically diverse than are standard Internet samples and are significantly more diverse than typical American college samples (Buhrmester, Kwang, and Gosling 2011, 3). In fact, “put simply, despite possible self-selection concerns, the MTurk subject pool is no worse than convenience samples used by other researchers in political science” (Berinsky, Huber, and Lenz 2012, 366). This is supported by other similar research, as well (Mason and Suri 2012).



While convenience samples can suffer from a lack of generalizability (Butler et al. 2005), survey respondents utilized through MTurk “exhibit the classic heuristics and biases and pay attention to directions at least as much as subjects from traditional sources” (Paolacci, Chandler, and Ipeirotis 2010, 417), and focused research on MTurk respondents has revealed no significant difference between MTurkers and other traditional samples drawn through other surveying methods (Goodman, Cryder, and Cheema 2012). It has been noted that “MTurk participants produce reliable results consistent with standard decisionmaking biases” (Goodman, Cryder, and Cheema 2012), and classic research has been replicated using MTurk respondents with satisfying results (Horton, Rand, and Zeckhauser 2011; Suri and Watts 2011). In sum, a diverse array of questions may be utilized in ways with online surveys, and specifically Mechanical Turk, that may not translate as well in other formats, a wide section of the intended population can be reached at a relatively low cost, few staff are required, data can be collected quickly, questions can be presented in a diverse array of formats, and respondents can take them, often, at a convenient time of their choosing (Evans and Mathur 2005; Mason and Suri 2012).

Nonetheless, some challenges exist with online surveys. There is always the concern that respondents may return and take the survey more than once, especially when being provided an incentive, in this case monetary. Being sensitive to this fact, I recruited MTurk respondents via the MTurk website and funneled them to Qualtrics to complete the survey. Qualtrics allows researchers to limit the ability of any IP address to visit and complete the survey more than once, which I did. Of course, this does mean that public computers may be “locked out” once the survey has been taken once; however, this is a small and acceptable eventuality to ensure the integrity of the survey. The likelihood of two respondents sitting down at the same public computer to take the same national survey is scant and, even if that did occur, any potential

respondent could still take the survey at another computer with no problems. Additionally, there is a concern with online surveys that respondents may be able to gather information online to aid them in answering questions posed to them. I did not neutralize this concern, because it simply did not exist for my project. My survey sought to gather respondent preferences and perceptions and, therefore, could be not compromised by any factual online search aid. Finally, the quality of the MTurkers themselves may be in question. A concern exists that online survey takers answer questions with no real thought or consideration, critically crippling results. This concern is mitigated by some research showing that the quality of data provided by MTurkers meets or exceeds the quality of survey respondents in other published research (Burhmester, Kwang, and Gosling 2011). In order to be doubly indemnified, and in a further effort to inoculate against “cheap” responses, however, I also chose to only accept MTurk respondents that had received a 95% or greater approval rating for prior work. Additionally, I conducted my own manipulation check in the survey.<sup>25</sup>

Taken together, these findings suggest that collecting data in this way for this dissertation project is efficient and inexpensive, and the findings are just as scientifically sound - perhaps, more valid, and equally reliable and generalizable – as many other, more traditional, methods of surveying. Specific to generalizability, some research suggests that convenience samples are just as generalizable as random samples (Hultsch et al. 2002). Having considered these things, then, polling a national sample of 1806<sup>26</sup> adults in the United States, I employed a quasi-experimental survey design to determine whether a policy decision from a given institution is accepted at

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<sup>25</sup> Each respondent was asked, relevant to the vignette that s/he received, “Do you happen to recall which of the following institutions made the policy regarding (the Guantanamo Bay Detention Facility’s operation; same-sex marriage; online sales taxation) in this survey?” 86.78% of the survey respondents accurately identified the institution that made the policy in the vignette they received.

<sup>26</sup> 1800 is the required sample size for a survey of this kind with a confidence level of 95% and confidence interval of 4.

different levels depending, in part, on respondents' views of the institution and its suitability to make policy in the given area. Respondents were asked about their level of support for three issues - the closing of the Guantanamo Bay Detention Facility, online sales taxation, and same-sex marriage, - perceptions of issues and institutions, and diffuse support for each institution. Respondents were also asked to rank the institutions in order of their aptitude to handle the three issues presented. The three issues were carefully chosen for the survey to present respondents with three distinct areas of policy making. These issues are distinctly different from each other, representing different areas of policy with which to examine effects. In fact, two of the issues (same-sex marriage and taxation) were considered to be such distinct policy areas that they have been used in other survey research about policy (Berinsky, Huber, and Lenz 2012). Additionally, national survey and poll questions have routinely asked questions in these areas (see, i.e., Gallup and Pew),<sup>27</sup> allowing me to draw from different sources to develop my argument. Further, these issues may be considered more or less "judicial," "legislative," or "executive" by respondents. For instance, given the historical perception of the courts as being protectors of individual rights, respondents may be more inclined to assign same-sex marriage to the Supreme Court. Likewise, online sales taxation may be most appropriately handled by Congress, given its enumerated power to lay and collect taxes, and Guantanamo Bay may be assigned to the President, given the office's constitutional duty to manage foreign affairs,

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<sup>27</sup> On the issue of online sales taxation, see <http://www.gallup.com/poll/163184/americans-especially-young-oppose-internet-sales-tax.aspx>. On the issue of Guantanamo Bay, see <http://www.gallup.com/poll/119393/Americans- Oppose-Closing-Gitmo-Moving-Prisoners.aspx>, <http://www.gallup.com/poll/124727/Americans-Oppose-Closing- Gitmo-Moving-Prisoners.aspx>, and <http://www.gallup.com/poll/113893/Americans-Send-No-Clear-Mandate- Guantanamo-Bay.aspx>. On the issue of same-sex marriage, see <http://www.people-press.org/2009/06/18/obamas- ratings-remain-high-despite-some-policy-concerns/4/>, <http://www.people-press.org/2013/06/06/changing-attitudes- on-same-sex-marriage-gay-friends-and-family/>, <http://www.people-press.org/2013/06/24/final-court-rulings-public- equally-interested-in-voting-rights-gay-marriage/>, <http://www.gallup.com/poll/1651/Gay-Lesbian-Rights.aspx>, and <http://www.gallup.com/poll/1651/Gay-Lesbian-Rights.aspx>.

including commanding the country's armed forces. Of course, there is room for disagreement and, so, likely variation, as to issue perception among respondents.

Respondents randomly received one of eighteen vignettes for each issue, in which a story was presented about a policy on one of the issues *opposed* to the respondents' preference (as revealed earlier in the survey), emanating from one of the three institutions.<sup>28</sup> I asked some follow-up questions related to the respondent's agreement with the policy espoused in the vignette and what action s/he might take as a result to determine acceptance of the policy.

There are three primary dependent variables of particular interest in this project, each examined in the subsequent chapters: institutional legitimacy, the respondent's institutional preference to handle each issue, and the respondent's acceptance of policy emanating from each of the institutions. As mentioned, legitimacy is measured using an index of five traditionally used questions. Methodologically, the determinants of legitimacy are examined utilizing Ordinary Least Squares Regression. I employ a Rank-Ordered Logistic Regression (Beggs, Cardell, and Hausman 1981) to determine which factors influence the institutional ranking on each issue presented to the respondent. Finally, Ordinary Least Squares Regression determines which factors influence respondent level of policy acceptance, which is measured using an index of four previously utilized questions in earlier research (Mondak 1994), as outlined in the next section.

In the legitimacy models, the primary independent variables included in the models include whether the institution fulfills its role, whether the institution uses fair procedures in its decisionmaking, whether the institution considers public interest when making policy decision, ideological distance from respondent and perceived ideology of the institution, and, when

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<sup>28</sup> It is important that respondents confront a policy that is opposed to their preferences in order to fully measure the institution's legitimizing capacity (see, e.g., Gibson, Caldeira, and Spence 2005).

appropriate, institutional trust. In the preference (ranking) models, the primary independent variables in the models include institutional legitimacy and institutional authority to make decisions in the three issue areas. In the policy acceptance models, the primary independent variables included in the models are institutional legitimacy, first ranking to handle each issue, whether the respondent considers the issue to be controversial, and whether the issue is primarily a moral, political, economic, social, or rights issue. In addition, all models control for gender, race, ideology, political party, age, family income, attention to news, ideological distance, level of education, and age. Five of these – race, sex, age, education, and ideology – are oft-used independent variables in similar models (see, i.e., Mondak 1994; Johnston and Bartels 2010).

#### *Operationalization and Measurement of Concepts*<sup>29</sup>

Policy Preferences. Each respondent was asked the following three questions:

- 1) Same-sex marriage should be recognized as a legitimate and legal institution by the United States government;
- 2) Businesses that sell items online should be required to collect the purchaser's state and local sales tax; and
- 3) The United States government should continue to detain prisoners without trial offshore at the Guantanamo Bay Detention Facility.

These questions were, primarily, asked to determine which of the 18 vignettes (which are discussed next) respondents would receive. It is important for a research project like this, seeking to determine acceptance of policies, that respondents receive a vignette with a policy outcome that runs counter to their preferences (Gibson, Caldeira, and Spence 2005). If respondents received a vignette with an outcome that was complementary to their own

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<sup>29</sup> A full copy of the survey instrument is included in the Appendix.

preferences, then it would make sense that they would accept that decision. As such, these three questions help to direct respondents to an outcome (on one of the three aforementioned issues) emanating from one of the institutions. The institution making the policy was randomly chosen by Qualtrics.

Vignettes. As mentioned, 18 vignettes were written for the survey, highlighting two actions each from each of the three institutions – presidency, Congress, and the Supreme Court – on each of the three issues – same-sex marriage, Guantanamo Bay, online sales taxation (see Tables 2a, 2b, and 2c for question wording). Each institution makes policy in different ways, so the wording of the vignettes reflects a policymaking option that is unique to that institution. The Supreme Court does not issue executive orders. Congress does not issue opinions. And the President does not vote on policy options. Instead, each institution has unique structural mechanisms to make policy, and the vignettes reflect these mechanisms. As a result, the policy options presented in the vignettes are not identical; however, the outcomes reflect the support, or lack of support, for each issue, within the constraints of each institution.

Each respondent was randomly chosen to receive one vignette, in which an institution made policy in one of the issue areas that ran counter to their earlier stated policy preference (see earlier discussion). For instance, if a respondent expressed support for same-sex marriage, they would randomly receive one of the vignettes from one of the institutions, in which the institution made policy against same-sex marriage.

[Insert Tables 2a, 2b, and 2c Here]

Legitimacy. The legitimacy literature, as it has been utilized to examine court systems, has relied on a number of indicators that, taken together, are supposed to tap into the concept diffuse support for the institution. For the past few decades, a handful of survey questions have

been designed and compiled, in varying configurations (see Table 3a for a list of questions that have been used), into an index of legitimacy that is then used to explain some enduring level of support for the courts. As a result, we might expect that these questions are adequate indicators of diffuse support - long-term sentiment for the institution - distinct from short-term reactions to, or satisfaction with, decisions or policy.

[Insert Table 3a Here]

While the indices that have been used in the courts literature to explain legitimacy have varied, as mentioned earlier, most often the indicators have relied on a number of survey questions that have focused on a respondent's perception of the court's involvement in politics, on whether the court favors certain groups or people over others, whether it holds too much power or independence, whether the court can be trusted to do the right thing or to consider the best interests of the people (or the public) in making decisions, and whether the court's constitutional power should be limited (or eliminated) should it begin making a number of decisions that are bad for the country or with which the respondent disagrees. But, as Table 1a highlights, no uniform number or set of questions has been utilized to comprise a legitimacy index to measure diffuse support. Instead, this pool of questions has been drawn from differently for differing research projects, with no established standard of which questions should be included to accurately explain institutional legitimacy, and little discussion as to the consequences of not adhering to some standard.

Table 3b highlights how these measures have been utilized in research works examining legitimacy, as well as the investment that the scholarship has put into these types of questions as being accurate measures of diffuse support for an institution. Recently, some scholars have begun to question the index, as it has been understood, constructed, and accepted for the past few

decades. Johnston and Bartels (2010) utilize the legitimacy questions to make comparisons between what drives long- and short-term court support, as it relates to media coverage, finding that diffuse support is more malleable than, perhaps, previously thought. In essence, they argue that declining public opinion can negatively impact diffuse support for the Court. Gibson (2011a) recently questioned the use of trust as an adequate measure of diffuse support, ultimately arguing that trust may actually be a more adequate measure of specific, rather than, diffuse support.

[Insert Table 3b Here]

Most indices include some variant of a question asking respondents how willing they would be to do away with the Court altogether if it started making decisions that most people disagreed with. While this question is certainly a measure of diffuse support, it is also a relatively “easy” one with which to disagree. Caldeira and Gibson (1992), in their first attempt to create an index of diffuse support, argued that such an index should contain questions that ask respondents to make difficult decisions about their “willingness to accept, make, or countenance major changes in fundamental attributes of how the high bench functions or fits into the U.S. constitutional system” (638). While the index Caldeira and Gibson (1992) utilized relied on questions related to a respondents’ willingness to do away with the Court, eliminate its power to declare acts unconstitutional, limit its right to decide controversial issues, defeat any proposal to do away with it, and willingness to rewrite the constitution to reduce its powers, most recent research also includes some variant of a question related to trust in the Court to make the “right” or “best” decisions for the people. This can be problematic, given what we know about trust in American government.



If we intend to accurately understand how people form opinions about our governing institutions, then it is incredibly important that legitimacy measurements are true indicators of long-term diffuse support for the institution. Therefore, the research presented here seeks to apply established measures of legitimacy to all three branches of American government – Supreme Court, Congress, and the presidency – while also taking care to carefully analyze any potential conflict between those measures that are clearly long-term indicators of legitimacy and those that might be more appropriately seen as measuring short-term support for decisions or people. Without doing so, inadequate measurement may flourish, leading us to “mistakenly conclude that Court legitimacy is more volatile than it is in fact were a more valid measure of legitimacy available” (Gibson, Caldeira, and Spence 2003b, 357).

The research here relies on variants of traditionally utilized questions that comprise the legitimacy index; however, since this research expands legitimacy literature beyond simply the courts, to include Congress and the presidency, some of the questions have been altered to be more appropriate to the institution. Each respondent was asked to what extent they agree with the following:

- Overall, how much confidence would you say you have in [the United States Supreme Court; Congress; the President of the United States]?
- Overall, how much trust would you say you have in [the United States Supreme Court, which sits in Washington, D.C.; the President of the United States; Congress] to make decisions that are right for the country?
- If [the United States Supreme Court; Congress; the President of the United States] started making decisions that most people disagree with, it might be better to do away with the [institution] altogether.

- The United States Supreme Court gets too mixed up in politics; and [Members of Congress; the President of the United States] put the interests of their/his/her party over the interests of the American people.
- The decisions made by the [United States Supreme Court; Congress; President of the United States] favor some groups more than others.

Questions aimed at making structural changes to the institution's constitutionally granted authority were altered to be specific and appropriate for each institution. Given that institutional legitimacy taps into a long-term sentiment toward an institution, it seems apropos that a question designed around a specific structural change that is relevant to each unique institution is a more adequate indicator of sentiment than a general, generic question about changes to institutional structure. Further, while each institution has some ability to make rule changes to its own body, or to the body of another institution, it is a constitutional change that suggests some true dedication to changing the long-term functioning and structure of an institution. It seems much more likely that making a constitutional change to an institution would invoke much more pause than a short-term rule change, suggesting that respondents willing to make a constitutional change to the structure of an institution are truly representing some critical dissatisfaction with the current structure of the institution. As such, my survey asks respondents two specific questions about constitutional changes to each of the branches of government that are 1) entirely possible, and 2) appropriate to the structure of each institution. Each institution has prescribed constitutional roles, as discussed earlier, which may inform expectations about those institutions. Some of those roles involve a check to another institution. For instance, Congress can choose whether to ratify treaties that are negotiated by the President. Congress can also override a presidential veto and confirm, or deny, presidential appointments. Congress can change the

Supreme Court's appellate jurisdiction. The Supreme Court can determine the constitutionality of legislative and executive action. And, the President can veto legislation and appoint Supreme Court justices to life terms. These are just some examples of constitutional powers that are imbued in each institution. Each of these contributes to perception of constitutional role. They provide a framework within which we can expect each institution to operate. Arguably, changes to the constitutional role of these institutions would also change public expectations. I argue that commitment to such constitutional changes would reflect actual dissatisfaction with the institution and its current structure. Each respondent was asked:

- It would make no difference to me if the United States Constitution were rewritten to eliminate lifetime appointments of Supreme Court justices, limiting their terms to 20 years; AND, it would make no difference to me if the United States Constitution were rewritten to provide for the election of Supreme Court Justices by the people, rather than appointment by the President.
- It would make no difference to me if the United States Constitution were rewritten to reduce Congress' power to approve or deny presidential appointments; AND, it would make no difference to me if the United States Constitution were rewritten to reduce Congress' power to make its own procedural rules, such as the filibuster.
- It would make no difference to me if the United States Constitution were rewritten to reduce the President's power to make lifetime appointments to the judiciary; AND, it would make no difference to me if the United States Constitution were rewritten to reduce the President's power to veto congressional legislation.

I fully understand that there are weaknesses with these questions. For instance, it cannot be stated that these questions are tapping into exactly the same thing across institutions. And,

further, it is not uniformly the case that each of the questions for each institution taps into some separation of powers sentiment; however, it is true for the questions related to the presidency. Admittedly, these are weaknesses that may influence the results. I do think, though, that these new questions move the debate forward and strengthen a measure of institutional legitimacy that suffers under the weight of its own inadequacies. Part of the problem with trying to conduct comparative analysis using the traditional legitimacy index is that the questions are specific to the courts. One example: respondents have always been asked to respond to some variant of the following question: “It would make no difference to me if the Constitution were rewritten to reduce the powers of the court.”

There are, at least, two problems with a question like this when trying to comparatively apply them to other institutions. First, if we care about comparing institutions on the same sentiment, then our questions to that end must be as specific as possible. To apply this question broadly for all institutions would leave us wondering which powers respondents are considering. In providing them with real examples of powers that could be constitutionally reduced, as do the new questions I have constructed, researchers can be sure that respondents are truly considering practical scenarios, even if the powers differ across institutions.

Second, the question is so broad that, while a large number of respondents may support reducing some powers of the courts in certain circumstances, researchers can draw no inferences about the strength of this conviction. Some respondents may be willing to reduce relatively insignificant powers. These respondents cannot be differentiated from those that would be willing to dramatically reduce the court’s powers. By asking respondents if they are willing to reduce real powers significant to each of the institutions, I can be sure that all respondents taking the survey were considering the same reduction of powers when answering these questions. As a

result, I can be confident that institutional legitimacy, as it then applies to each institution, is a genuine, measureable response that is uniform across respondents.

Finally, as will be revealed in the next chapter (see Figures 2a, 2b, and 2c of Chapter III), these questions tap into similar sentiments, loading on the same factor for each institution. I argue that, while my questions about structural changes are different for each institution, they are 1) more relevant to the legitimacy of each institution, and 2) tapping into very real possibilities that respondents could imagine supporting (or not). As such, I argue that the legitimacy index constructed using these new, institution-specific questions is a more accurate reflection of institutional legitimacy than the dizzying configuration of questions that has been randomly constructed and utilized in the past.

To that end, an additive legitimacy index was composed for each institution from all of the above questions. In Chapter III, I examine the efficacy of including each of these variables in one index of diffuse support, ultimately arguing that some variables measure short-term legitimacy, or specific support, more so than long-term institutional legitimacy.

Ideological Distance. Bartels and Johnston (2013) argue that respondent ideological disagreement with the Supreme Court markedly decreases legitimacy for the Court. This would suggest that the Court's legitimacy is sensitive to political winds, which would weaken the argument that legitimacy is long-term sentiment for an institution that does not waver. Gibson and Nelson (2014) find fault with the research and reiterate the enduring power of institutional legitimacy, not subject to changes in the immediate political environment. Given this disagreement in the literature, I have included a measure of ideological distance in my legitimacy, preference, and acceptance models that is calculated utilizing the following questions:

- What is your perception of the ideological makeup of the United States Supreme Court, which sits in Washington, D.C.?
- What is your perception of the ideological makeup of the United States House of Representatives?
- What is your perception of the partisan makeup of the United States Senate?
- What is your perception of the ideological inclinations of the President of the United States?
- When it comes to politics, do you usually think of yourself as: Conservative, Moderate, Liberal?
  - Those that responded “liberal,” were then asked if they considered themselves “strong” or “not strong” liberals, and
  - Those that responded “conservative,” were then asked if they considered themselves “strong” or “not strong” conservatives.”

Respondents were presented with five options: strongly conservative, moderately conservative, evenly balanced, moderately liberal, and strongly liberal. The responses for the United States House of Representatives and the United States Senate were combined to create one variable of perceived congressional ideology. Given the disagreement in the literature (see the conflict between Bartels and Johnston 2013 and Gibson and Nelson 2014), and the fact that it has only focused on the Supreme Court, I have no expectation for this variable to influence legitimacy in any particular way, however, the results here may help to settle the debate.

Institutional Preference. It is important to determine which institution a respondent deems is “best-suited” to deal with an issue and which s/he deems least, in order to examine whether that consideration influences policy acceptance. As previously mentioned, people may

have preferences about which institution makes which types of policies and these preference may, in turn, influence acceptance for the policies emanating from the institutions (Benesh and Fetting 2011). To do this, I ask respondents: “Of the following institutions, please tell me which you think is best- (least) suited to make decisions about (same-sex marriage, online sales tax, Guantanamo Bay).” Respondents were then presented with three options: presidency, Congress, the United States Supreme Court.

Policy Acceptance. Policy acceptance, utilized as a dependent variable, is captured in the survey instrument via an index of four questions asked of respondents following a vignette in which one of the three American government institutions makes a policy (liberal or conservative) on same-sex marriage, online sales tax, Guantanamo Bay. These questions are variations of questions utilized in other research to determine policy acceptance and agreement (Mondak 1994). For each institution, and on each issue, the index created from these four questions load neatly onto one factor, meaning that these questions “hang” together well as a singular measurement of policy acceptance. Essentially, these questions are speaking to the same, general sentiment about acceptance of a policy emanating from an institution.

- 1) “The (Supreme Court, Congress, President) made the right decision.”
- 2) “The (Supreme Court’s, Congress’, President’s) decision ought to be the final decision on the matter.”
- 3) “I would encourage groups with opposing views to challenge the (Supreme Court’s, Congress’, President’s) decision.”
- 4) “Issues like this ought to be kept out of the (courts, Congress, President’s office).”

Respondents were presented with four options for each question: strongly disagree, disagree, agree, and strongly agree. Responses were coded to reflect increasing acceptance and combined into an additive index of policy acceptance.

It is worth noting at this point, that this index does not receive the same critical treatment that the legitimacy index does in this dissertation project. This is done for two reasons. First, this project is, primarily, about determining which factors influence policy acceptance. The story revolves around the argument that people have preferences about which branch of government makes which certain policies, contingent on a number of variables that are outlined here. To that end, much time is spent examining those independent variables that, theoretically, drive policy acceptance. Second, and maybe more importantly, there is no true conflict in the policy acceptance literature about the measurement of acceptance. This does not necessarily mean that the traditional index measure deserves no scrutiny, but it does offer some confirmation that, perhaps, policy acceptance is conceptualized well. The traditional measure of institutional legitimacy, on the other hand, has been experiencing increased scrutiny in recent years (see i.e., Gibson 2011a; Weinschenk, Fettig, and Benesh 2013), making further examination critical to understanding institutional legitimacy and, consequently, policy acceptance.

Countermajoritarianism. I include questions about the nature of the issues being considered in the research, asking respondents if they consider each of the issues *primarily* to be: political questions, social issues, moral issues, economic issues, or about rights of individuals. These categories are offered as distinct and clear options for respondents from which to choose. Additionally, they lend themselves to institutional differences, given aforementioned expectations (constitutionally and otherwise) about the institutional roles. For instance, as mentioned earlier, those that perceive an issue to be about rights might also rank the judiciary,



an, arguably, countermajoritarian institution, highly in that issue area. And, those that perceive an issue to be primarily economic might also prefer Congress to handle that issue. Of the three issues chosen for examination here, I expect respondents to consider online sales taxation to be primarily an economic issue. I expect same-sex marriage to be considered primarily a rights-based issue. On the issue of Guantanamo Bay, however, I am agnostic. This issue could, arguably, be perceived as primarily about rights, morality, or politics.

Role Fulfillment. We might expect that if an individual perceives that an institution has consistently fallen short of fulfilling its role, as identified by the individual, then s/he might have less faith in that institution to handle any given issue (see, i.e., Barak and Fried 2002, Burbank 2004, and Tyler and Huo 2002 for examples of institutional roles). To measure perception of institutional role fulfillment, respondents were asked the following question:

- “Thinking about the role of (the United States Supreme Court, the President of the United States, Congress) in our democratic system of government, would you say that (the United States Supreme Court, the President of the United States, Congress) fulfills the role you perceive he/she/it ought to play?”

Respondents were presented with four options: all of the time, some of the time, rarely, or never.

Procedural Justice/Fairness. Respondents were asked one question for each institution about the fairness of its procedures. This question is drawn from previous work on procedural justice (Sunshine and Tyler 2003) and is utilized as an independent variable in the legitimacy, preference, and policy acceptance models. While numerous variants of the question have been used in previous procedural fairness research (see, i.e., Tyler and Caine 1981; Hibbing and

Theiss-Morse 1995), consistency has been scarce, and so I rely on this very direct approach to ascertain respondent perception of procedural fairness, asking respondents:

- “(The United States Supreme Court, the President of the United States, Congress) uses fair procedures to make decisions in a fair way.”

Respondents were presented with four options, ranging from almost always to almost never.

Considers the People. Hibbing and Theiss-Morse (1998) argue that Congress and the presidency suffer from low approval numbers because they engage in political posturing, which the public finds unseemly, but that the public does care that their voices are heard, that public opinion is considered, by their elected officials. To tap into this sentiment, respondents were asked:

- “(The United States Supreme Court, the President of the United States, Congress) considers the interests of the people when making decisions.”

Respondents were asked to choose from four options (“strongly disagree” to “strongly agree”).

Scope of Authority. Remember that authority enhances acceptance (Tyler 2004) and fosters acquiescence to policies, even when they run counter to personal preference (French and Raven 1959; Merelman 1966). So, respondents were also asked a question for each issue area about whether or not the issue is within that institution’s scope of authority.

- “It is within the authority of (the United States Supreme Court, the President’s office, Congress) to make policy on the issue of (same-sex marriage, Guantanamo Bay, online taxation).”

Respondents were presented with the usual four options (“strongly disagree” to “strongly agree”).

Controversial Issue. The level of perceived controversy surrounding an issue may affect acceptance. Specifically, being conflict avoidant, an increase in the level of perceived controversy related to an issue may depress acceptance of policies made by certain institutions in that area. Remember that increased controversy leads to decreased policy acceptance (Nie and Wyman 2005) and, therefore, is included in the policy acceptance models in Chapter V.

Respondents were asked:

- “The issue of (same-sex marriage, online sales taxation, Guantanamo Bay Detention Facility’s operation) is controversial.”

Respondents were asked to choose from four options (“strongly disagree” to “strongly agree”), and the resultant independent variable is included in the acceptance model.

Socioeconomic Variables. As controls, I also ask various SES questions, including age, gender, family income, race, political party identification, ideology, ideological distance, education level, and knowledge (via a measure of respondent level of attention to news).<sup>30</sup>

## CONCLUSION

In the next chapter, I examine legitimacy comparatively across the three branches of American government – the presidency, Congress, and the Supreme Court. In doing so, I deconstruct the traditional legitimacy index and tease out subtle implications related to including each of the variables – specifically, I argue that, perhaps, some of the measures are capturing

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<sup>30</sup> These are oft-used independent variables in legitimacy and acceptance literature (see, i.e., Mondak 1994; Benesh 2006; Johnston and Bartels 2010; Bartels and Johnston 2013). Each variable is coded onto an increasing scale and they are utilized in all models of institutional legitimacy, rank, and policy acceptance. Given our understanding of how these variables matter to legitimacy (again, see, i.e., Mondak 1994; Benesh 2006; Johnston and Bartels 2010) coupled with the argument that I assert here – that policy acceptance follows from legitimacy and rank – that these independent variables may matter to each of the models. While no extant literature explains how these variables predict institutional preference or policy acceptance, I explore this possibility.

short-term, rather than long-, sentiment for the institutions and, as such, reconsideration should be given to how we have come to measure institutional legitimacy. In doing so, I argue that only those measures that truly capture long-term support for the institution should be included in any index measuring institutional legitimacy. It may be that those remaining variables still matter to policy acceptance, however. And, therefore, I will construct a true institutional legitimacy index, comprised of only those long-term variables, and a short-term legitimacy index of the variables that are both theoretically and functionally capturing specific support for an institution. Both indices will be utilized in Chapter V, examining influences of policy acceptance.

In Chapter IV, I examine respondent preference of institution best-suited to make policy in certain issues areas, making the argument that people care which branch of government handles certain issues at certain times. I test a model via rank-ordered logistic regression to understand which factors that influence institutional preference to handle certain policies. This model includes institutional legitimacy and authority to make policy as the primary independent variables.

Relying on the analysis in this chapter, I then turn to answering the question that lies at the heart of this project in Chapter V – what drives policy acceptance? While extant research in legitimacy and policy acceptance is both vast and varied, heretofore we have been unable to truly evaluate the influences that matter to acceptance, for a couple of reasons. First, legitimacy measurements have been inconsistent and, worse, inadequate measures of what they purport to measure – long-term support for an institution. By disaggregating and investigating the contribution of each oft-used variable in the legitimacy index, I am able to remove those variables that inadequately measure legitimacy, or offer no true long-term sentiment, thereby strengthening the overall legitimacy measure. Second, for the first time, a legitimacy index,

similar to the one that has been utilized to explain long-term support for the judiciary, is applied to the presidency and Congress, as well. This allows us to 1) speak comparatively about legitimacy in an authoritative way, and 2) furthers our understanding of how legitimacy may, or may not, matter to each of the branches of American government. Finally, relying on theoretical framework, we can explain how the source of policy can influence acceptance, offering policymakers a valuable tool in crafting policy. As such, the research here offers a big step forward in 1) explaining policy acceptance, and 2) modeling those factors that can mitigate resistance, and enhancing acceptance, of policy. Good government is, in part, government that garners willful acquiescence and compliance. This project provides a roadmap to those ends.

**Table 2a: Vignette Wording, Guantanamo Bay**

	<b>Presidency</b>	<b>Congress</b>	<b>Supreme Court</b>
Guantanamo Bay – Remain Open	The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President of the United States issued an executive order ensuring the continued use of the Guantanamo Bay Detention Facility to hold and interrogate prisoners offshore.	Consider the following situation. After the other institutions failed to act, suppose Congress passed legislation, by a veto-proof margin, requiring that the Guantanamo Bay Detention Facility stay in operation and continue to accept and hold prisoners for interrogation offshore.	Consider the following situation. After the other institutions failed to act, suppose the United States Supreme Court, which sits in Washington, D.C., heard a case challenging the constitutionality of the United States government's practice of holding prisoners offshore indefinitely without trial. The Supreme Court then issued a ruling upholding the constitutionality of the facility's use, thereby ensuring that the Guantanamo Bay Detention Facility continue to accept and hold prisoners for interrogation offshore.
Guantanamo Bay - Close	The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President of the United States issued an executive order to close the Guantanamo Bay Detention Facility and transfer all of its prisoners to super-max prisons on the United States mainland by August 1, 2013	Consider the following situation. After the other institutions failed to act, suppose Congress passed legislation, by a veto-proof margin, requiring the closure of the Guantanamo Bay Detention Facility and the transfer of all of its prisoners to super-max prisons on the United States mainland by August 1, 2013.	Consider the following situation. After the other institutions failed to act, suppose the United States Supreme Court, which sits in Washington, D.C., heard a case challenging the constitutionality of the United States government's practice of holding prisoners offshore indefinitely without trial. The Supreme Court then issued a ruling ordering the closing of the Guantanamo Bay Detention Facility and the transfer of its prisoners to super-max prisons on the United States mainland by August 1, 2013.

**Table 2b: Vignette Wording, Online Sales Taxation**

	<b>Presidency</b>	<b>Congress</b>	<b>Supreme Court</b>
Online Sales Taxation-Collect	The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President of the United States issued an executive order requiring all online businesses conducting transactions to collect state and local sales taxes, just like physical stores in your community must, beginning August 1, 2013.	Consider the following situation. After the other institutions failed to act, suppose Congress passed a bill, by a veto-proof margin, that required all online businesses conducting transactions to collect state and local sales taxes, just like physical stores in your community must, beginning August 1, 2013.	Consider the following situation. After the other institutions failed to act, suppose the United States Supreme Court, which sits in Washington, D.C., heard a case alleging that treating online businesses differently from physical stores in your community violates the Constitution. The Supreme Court subsequently ruled that online businesses conducting transactions must collect state and local sales taxes, just as physical businesses in your community must, beginning August 1, 2013.
Online Sales Taxation – Do Not Collect	The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President of the United States issued an executive order exempting online businesses from collecting state and local sales taxes in the same way that physical businesses in your community must.	Consider the following situation. After the other institutions failed to act, suppose Congress passed legislation, by a veto-proof margin, that exempted online businesses from collecting state and local taxes in the same way that physical businesses in your community must.	Consider the following situation. After the other institutions failed to act, suppose the United States Supreme Court, which sits in Washington, D.C., heard a case alleging that treating online businesses differently from physical stores in your community violates the Constitution. The Supreme Court subsequently ruled that businesses are not constitutionally required to collect state and local taxes and could not be compelled to do so in the same way that physical stores in your community must.

**Table 2c: Vignette Wording, Same-Sex Marriage**

	<b>Presidency</b>	<b>Congress</b>	<b>Supreme Court</b>
Same Sex Marriage - Support	The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President of the United States issued an executive order requiring all federal agencies to provide same-sex marriage benefits to all federal employees equal to those provided to opposite-sex married couples, to begin August 1, 2013.	Consider the following situation. After the other institutions failed to act, suppose Congress passed a law, by a veto-proof margin, recognizing same-sex marriage as a legal institution in the United States.	Consider the following situation. After the other institutions failed to act, suppose the United States Supreme Court, which sits in Washington, D.C., heard a case challenging the federal Defense of Marriage Act, which limits marriage to relationships between one man and one woman. The Supreme Court subsequently issued a ruling that the Defense of Marriage Act discriminates against same-sex couples and established a federal right to marry for same-sex couples in the United States.
Same Sex Marriage – Do Not Support	The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President issued an executive order that same-sex couples working for the federal government are not to receive federal marriage benefits equal to those benefits offered to opposite-sex couples.	Consider the following situation. After the other institutions failed to act, suppose Congress passed a law, by a veto-proof margin, that went further than the federal Defense of Marriage Act, which defines marriage as an institution between one man and one woman, explicitly outlawing same-sex marriage in the United States.	Consider the following situation. After the other institutions failed to act, suppose a case was presented to the United States Supreme Court, which sits in Washington, D.C., by a same-sex couple, challenging the federal Defense of Marriage Act, which defines marriage as an institution between one man and one woman. After hearing arguments, the Supreme Court rendered a decision supporting the constitutionality of the Defense of Marriage Act, affirming that same-sex marriage is not required to be federally recognized.



**Table 3a: Measures of Legitimacy**

Question	Paper(s)
1. The power of the (relevant court) to declare acts of Congress unconstitutional should be eliminated.	Gibson 1989; Gibson and Caldeira 1992
2. If the (relevant court) continually makes decisions that the people disagree with, it might be better to do away with the Court altogether. (or some variant of doing away with the court)	Gibson 1989; Gibson and Caldeira 1992; Gibson and Caldeira 1995; Gibson, Caldeira, and Baird 1998; Gibson, Caldeira, and Spence 2003; Gibson, Caldeira, and Spence 2005; Gibson 2007; Gibson 2008; Gibson and Caldeira 2009a; Gibson and Caldeira 2009b; Gibson and Caldeira 2009c; Gibson, Gottfried, Delli Carpini, and Jamieson 2010; Johnston and Bartels 2010; Gibson and Caldeira 2011
3. It would not make much difference to me if the U.S. Constitution were rewritten so as to reduce the powers of the Supreme Court. (or some variant of power reduction)	Gibson 1989; Gibson and Caldeira 1992; Gibson and Caldeira 1995; Gibson, Caldeira, and Baird 1998
4. The right of the (relevant court) to decide certain types of controversial issues should be limited by the Congress (or reduced in some way).	Gibson 1989; Gibson and Caldeira 1992; Gibson, Caldeira, and Spence 2003; Gibson, Caldeira, and Spence 2005; Gibson 2007; Gibson 2008; Gibson and Caldeira 2009a; Gibson and Caldeira 2009b; Gibson and Caldeira 2009c; Gibson, Gottfried, Delli Carpini, and Jamieson 2010; Gibson and Caldeira 2011
5. People should be willing to do everything they can to make sure that any proposal to abolish the Supreme Court is defeated.	Gibson 1989; Gibson and Caldeira 1992
6. The political independence of the (relevant court) is essential. Therefore, no other (relevant institution) should be able to override Court opinions even if it thinks they are harmful to the (relevant) community.	Gibson and Caldeira 1995
7. The (relevant court) can usually be trusted to make decisions that are right for the country (or state) as a whole/trusted to operate in best interests of American people	Gibson, Caldeira, and Baird 1998; Gibson, Caldeira, and Spence 2003; Gibson, Caldeira, and Spence 2005; Gibson 2007; Gibson 2008; Gibson and Caldeira 2009a; Gibson and Caldeira 2009b; Gibson and Caldeira 2009c; Johnston and Bartels 2010; Gibson and Caldeira 2011
8. The decisions of the (relevant court) favor some groups more than others.	Gibson, Caldeira, and Spence 2003; Gibson, Caldeira, and Spence 2005; Johnston and Bartels 2010
9. The (relevant court) gets too mixed up in politics. (or some other variant of the court being too mixed up in politics)	Gibson, Caldeira, and Spence 2003; Gibson 2007; Gibson 2008; Gibson and Caldeira 2009a; Gibson and Caldeira 2009b; Gibson and Caldeira 2009c; Gibson, Gottfried, Delli Carpini, and Jamieson 2010; Johnston and Bartels 2010; Gibson and Caldeira 2011
10. The (relevant court) should have the right to say what the (relevant constitution) means, even when the majority of the people disagree with the Court's decision. (or some other variant of the court's constitutional interpretation in conflict the majority interpretation)	Gibson, Caldeira, and Spence 2003; Gibson 2008; Gibson, Gottfried, Delli Carpini, and Jamieson 2010
11. Judges of the (relevant court) who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge.	Gibson 2008; Gibson and Caldeira 2009b; Gibson, Gottfried, Delli Carpini, and Jamieson 2010; Gibson and Caldeira 2011
12. The (relevant court) ought to be made less independent so that it listens a lot more to what the people want. (or some other variant of limiting the court's independence)	Gibson 2008; Gibson and Caldeira 2009b; Gibson, Gottfried, Delli Carpini, and Jamieson 2010; Gibson and Caldeira 2011

**Table 3b: Indices Used**

<b>Index</b>	<b>Paper(s)</b>
Index 1: Questions 1, 2, 3, 4, and 5	Gibson 1989; Gibson and Caldeira 1992
Index 2: Questions 2, 3, and 6	Gibson and Caldeira 1995
Index 3: Questions 2, 3, and 7	Gibson, Caldeira, and Baird 1998
Index 4: Questions 2, 4, 7, and 9	Gibson 2007; Gibson and Caldeira 2009a; Gibson and Caldeira 2009c
Index 5: Questions 2, 4, 7, and 8	Johnston and Bartels 2010
Index 6: Questions 2, 7, 8, and 9	Gibson and Caldeira 1995
Index 7: Questions 2, 4, 7, 8, 9, and 10	Gibson, Caldeira, and Spence 2003
Index 8: Questions 2, 4, 7, 9, 11, and 12	Gibson and Caldeira 2009b; Gibson and Caldeira 2011
Index 9: Questions 2, 4, 9, 10, 11, and 12	Gibson, Gottfried, Delli Carpini, and Jamieson 2010
Index 10: Questions 2, 4, 7, 9, 10, 11, and 12	Gibson 2008

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## **CHAPTER III**

### **INSTITUTIONAL LEGITIMACY: A COMPARISON ACROSS BRANCHES**

Institutional legitimacy, being an enduring support for an institution, is an important concept for researchers to understand. Much research has been dedicated to understanding judicial legitimacy, including an index of survey questions that has been employed in furthering our comprehension of the concept, and those variables that impact legitimacy. As discussed in the previous chapter, until now, our understanding of how legitimacy has been exclusively limited to the judiciary. We assume that the same concepts that have come to be utilized as traditional measures of judicial legitimacy will also apply to the other branches. And, we do so with no concrete comparative evidence to support this. Here, I take that step (conducting comparative analysis of legitimacy across the other branches of government) and one further, analyzing the entire index, disaggregating the variables, and arguing for a new conceptualization of institutional measurement of legitimacy. First, though, in pursuit of the larger dissertation goal of understanding what drives policy acceptance, it is important to discuss how legitimacy informs acceptance.

As we know, increased legitimacy leads to an increased capacity to legitimate policy, meaning that levels of acceptance are enhanced (Mondak 1994). Therefore, in order to understand acceptance, we must be able to establish an understanding about what influences legitimacy. And, since each of the three branches of government can make and change policy in a number of issue areas, it is important to understand how legitimacy applies to each of the branches, something that, heretofore, we have been unable to do. The purpose of this chapter, then, is to utilize the unique survey that I designed and administered to comparatively examine institutional legitimacy. Further, exhaustive analysis is applied to the traditional legitimacy

index and a new conceptualization of legitimacy measurement is posited. The new institutional legitimacy index established in this chapter is then utilized, as appropriate, moving forward with this study of policy acceptance.

Legitimacy and legitimation has been tied to the institution, with the general consensus being that the courts can legitimate any policy more than the legislative or executive branches can, without regard to the issue at hand (Mondak 1994; Hibbing and Theiss Morse 1995). This is all posited with a blind eye to the fact that we have no comparative evidence suggesting that the concept of legitimacy, as it has come to be measured for the courts, can also be applied, and interpreted in the same way, to the other policymaking branches of American government, the legislature and the presidency. This theoretical argument about legitimacy is grounded in the notion that the policymaking source (here, the institution) may have the ability to influence public opinion about policy outcomes and, further, that part of an individual's evaluation of the source<sup>31</sup> might actually be an evaluation of how suitable the institution is to make policy in a given area. If suitability is tied to legitimacy, as has been posited, then it is important to understand legitimacy, as it relates to all three branches of American government. Here, for the first time, legitimacy, or diffuse support, as it has been conceptualized in judicial literature, will be applied to Congress and the presidency in the same way.

In pursuit of such a goal, and given the extant literature on the power of the courts to legitimate policy, it is first imperative to examine the legitimacy that each branch of American government enjoys. As noted, up until now, legitimacy research has focused almost exclusively on the courts. While such legitimacy is important, the lack of comparison with the other

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<sup>31</sup> Much research, usually in psychology, suggests people are influenced both by information they receive and the source from which they receive it (see, e.g., Chaiken 1980; Birnbaum and Stegner 1979). Mondak argues, for example, that source credibility can drive opinions on a policy (in low information contexts), while it is only part of the evidence for decisions involving high degrees of personal relevance (or for those holding high levels of information) (Mondak 1990, 1993).

branches of government severely limits our ability to truly talk about policy legitimation. Here, I offer a comparison of legitimacy, relying on established legitimacy measures, across all three policymaking branches of American government – judicial, legislative, and executive. In doing so, this research provides the scholarship with a new understanding of how the public perceives each branch of government beyond mere approval or even trust. Further, when we talk about the ability of a branch of government to legitimate policy and, thus, enhance support of policy, we will be able to say something important about which branch is truly considered to be the most legitimate policymaking body on any given issue, and account for those legitimacy levels in explaining legitimation. In essence, institutional legitimacy (diffuse support) can inform levels of policy acceptance (specific support). This provides the foundation for the analyses to follow in subsequent chapters, examining where policy acceptance originates and, ultimately, arguing that consideration of where acceptance comes from can dramatically influence how lawmakers, legislators, and others pursue policymaking in American government.

Additionally, close scrutiny is applied to the legitimacy index to determine whether the index is adequately measuring what it purports to measure: an enduring, long-term commitment to the institution. While some oft-used measures that are included in the legitimacy index are clearly measures of long-term support, others are, arguably, more appropriate measures of short-term attitudes about specific decisions, policies, or persons. It is important to analyze this carefully, as any measure of institutional legitimacy, or diffuse support, should tap only into long-term commitments, since any short-term measures would contaminate our understanding of long-term institutional legitimacy. To be sure, there may be much merit in the idea that there is a difference between long-term legitimacy and short-term legitimacy. Short-term legitimacy, or specific support, is found in measures like job approval and specific policy outcomes, and is



often attached to the inhabitants of an office (Easton 1975), whereas long-term legitimacy, or diffuse support, is a sentiment for an institution that is insulated from the actions of any given inhabitants (Easton 1965; 1975; Caldeira 1986). To be sure, however, short-term legitimacy can influence long-term legitimacy. Sustained negative affective reaction to an institution, as a result of short-term actions can lead to an aggregate depletion of institutional legitimacy (Caldeira and Gibson 1992).

First, in this chapter, I will do some comparative analysis of institutional legitimacy, relying on the traditional legitimacy index as the dependent variable. I do so because the traditional legitimacy index has become codified in legitimacy literature, accepted as a firm measure of institutional legitimacy, and, therefore, the first logical step is to apply that same understanding to the other institutions. At minimum, we should, as a first step in comparative analysis, understand institutional legitimacy within the same context that we have come to understand judicial legitimacy. I will then dissect the legitimacy index with the intent to scrutinize the efficacy and power of each variable included in the index, arguing that some oft-used variables in the index are better measures of short-term support for institutions. Then, I will make the argument that some short-term variables impact long-term institutional legitimacy, providing evidence, as well as an explanation, for this phenomenon. Finally, I will construct a new legitimacy index comprised of only the variables that truly capture long-term support for the institutions and run regression analyses utilizing this new institutional legitimacy index, making the case that it is a better measure of institutional legitimacy and, therefore, should be embraced by legitimacy researchers in future discussions and analysis of long-term support for institutions. I do this in an effort to understand what drives true institutional legitimacy, as, ultimately, with this dissertation project I argue that legitimacy informs policy acceptance. In order to fully

understand what predicts policy acceptance, it is crucial to truly measure the concept of institutional legitimacy.

The dependent variable for all models in this chapter is some form of institutional legitimacy, which is an index comprised of some variation of the oft-used variables compiled to measure legitimacy – confidence, trust, do away with the institution, too mixed up in politics, favors some groups over others, and constitutional changes to the institution. Remember, as outlined in the previous chapter, the legitimacy index utilized here does differ somewhat, though, in that the questions about constitutional changes to the structure of the institution are very carefully designed to change specific constructs uniquely pertinent to each institution. This is done for a couple of reasons. First, since institutional legitimacy has been studied almost exclusively in the courts, the questions that have been used are often specific to judicial structures (i.e., “the right of the relevant court to decide certain types of controversial issues should be limited by the Congress.”), but would not directly translate to the other institutions. Therefore, some changes to question wording are necessary to make the questions applicable to the relevant institutions. Second, the questions are somewhat broad and I argue that broadness can also be somewhat vague. It makes more sense that specific constitutional powers unique to each institution (i.e., presidential veto power; power of Congress to confirm presidential appointees; power of the Supreme Court to find congressional acts to be unconstitutional, etc.) be addressed in the survey. Respondents can, then, consider very real and very possible consequences to each of the institutions for a series of “bad” decisions, or policies that run counter to majority opinion. This, in turn, may coax more thoughtful responses from respondents.

As has been discussed in the previous chapter, the legitimacy models constructed and examined here include theoretically supported independent variables, such as perception that the institution fulfills its role (see, i.e., Barak and Fried 2002; Burbank 2004; Smith 1981), considers the people when making decisions (see, i.e., Skogstad 2003; Wallner 2008), and uses fair decisionmaking processes (see, i.e., Tyler and Rasinski 2001; Hibbing and Theiss-Morse 2001; Tyler 2001; Sunshine and Tyler 2003). In addition, respondents were asked about their level of attention to news. This may be a measure of some level of knowledge and, given that we know that knowledge matters to legitimacy (Benesh 2006), this is also included in the models. Further, education (Benesh 2006) is included in the models. Ideological distance (discussed in the next paragraph) is also included (Bartels and Johnston 2013). Finally, a number of demographic variables are included in the models (sex, race, age, income, party identification, and ideology). Rooted in theoretical groundwork, I expect that two of the variables measuring constitutionally structured characteristics of the institutions – fulfills its role; uses fair processes – will be significantly related to institutional legitimacy, such that as perception in these areas increases, so too will legitimacy in the institution. The third such variable – considers the people when making decisions – may be more closely associated with the presidency and Congress, as these institutions are considered to be more representative of the people, whereas the courts are often considered to be removed from the political process and public opinion. As such, I expect that this variable will be less influential on institutional legitimacy for the Supreme Court than it is for Congress and the presidency. Also, as discussed in the previous chapter, ideological distance may matter to legitimacy, such that as perceived distance between the respondent and the institution increases, legitimacy will decrease (Bartels and Johnston 2013); however, subsequent research argues that this relationship does not exist (Gibson and Nelson 2013). In an attempt to

contribute to the debate, I include the variable in my models here; however, I expect to find no influence, especially when measuring diffuse support in a theoretically careful manner. Finally, and in keeping with prior research in this area, as knowledge and education increase, I expect that institutional legitimacy will also increase.

## **DATA AND ANALYSIS**

Preliminarily, from an institutional comparative perspective, survey findings suggest that, of the three branches of government, the Supreme Court seems to enjoy the highest level of legitimacy, followed closely by the President, and finally Congress (see Figure 1). This seems to comport with public approval, as the Supreme Court tends to hold the highest approval levels, while Congress tends to languish with low approval numbers.

[Insert Figure 1 Here]

Indeed, at the time that the survey for this article was conducted, the president's job approval was at 48%<sup>32</sup>, Congress' was at 16%<sup>33</sup>, and the Supreme Court's was at 52%<sup>34</sup>.

One model for each of the three institutions, totaling three models (see Table 4), helps us to understand the variables that most influence the legitimacy of each institution (see Chapter II for a discussion about how the index is constructed). For each institution, an Ordinary Least Squares regression model was run with the traditional legitimacy index as the dependent variable, and including the institution-specific questions related to reduction of constitutional powers as independent variables, as outlined in the Methods section of the previous chapter. While I will later make the case against this traditional legitimacy index, it is important to first establish a comparative analysis of institutions utilizing the extant methods and measurements.

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<sup>32</sup>Retrieved from <http://www.gallup.com/poll/113980/Gallup-Daily-Obama-Job-Approval.aspx> on June 27, 2014.

<sup>33</sup>Retrieved from <http://www.gallup.com/poll/163964/congress-approval-rating-remains-near-historical-lows.aspx> on June 27, 2014.

<sup>34</sup>Retrieved from <http://www.people-press.org/files/2013/03/3-25-13-1.png> on June 27, 2014.

From there, the remainder of the chapter will focus on disaggregating the index and determining which variables are contributing to measurement of long-term sentiment for the institutions, and which may be capturing a more specific, short-term support for the institutions.

[Insert Table 4 Here]

For all three institutions, perceptions that the institution fulfills its role and uses fair procedures in its decision making processes are statistically significant predictors of institutional legitimacy.<sup>35</sup> These variables move in the expected direction, such that as each variable measure increases, so does that institution's legitimacy. The fact that a respondent's perception that the institution fulfills its role predicts institutional legitimacy for all branches is important, in that the question is specifically about institutional design and, as such, should be tapping into a long-term level of support. Likewise, perception that the institution uses fair procedures in its decision making is also tapping into a design-level construct and should, therefore, be touching upon long-term considerations. In this context, it is then easy to grasp how these concepts, in general, may also lead to increased levels of legitimacy in that government's institutions.

There are other indicators of legitimacy that are not uniform across institutions. For instance, females have significantly more legitimacy in the office of the presidency than do males; however, respondent sex is not a factor in legitimacy levels for either Congress or the Supreme Court. Asians assign less legitimacy to Congress. African Americans also assign less

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<sup>35</sup> The large coefficients for these variables suggests that, perhaps, these variables might actually be capturing sentiment about the dependent variable itself, institutional legitimacy. Despite the theoretical reasoning for maintaining these variables as independent predictors of legitimacy, it is important to examine how these variables correlate with the indicators utilized in the legitimacy index. Factor analysis, and factor loadings, reveal that, for all three institutions, these three independent variables load on a different factor than do the three most long-term of variables in the legitimacy index – do away with the institution and changes to constitutional structure of the institution (of which there are two for each institution, as outlined in the previous chapter). These three independent variables do correlate much more closely with the more short-term variables utilized in the index. A discussion about short- vs. long-term variables utilized in the traditional institutional legitimacy index will come later in this chapter. For now, suffice to say that the three independent variables are best used as independent variables in the models and that they are strong indicators of institutional legitimacy.

legitimacy to Congress, but greater legitimacy to the presidency than do other races.

Conservatives assign more legitimacy to Congress and Republicans assign less to the presidency.

And, contrary to Bartels and Johnston (2013), as respondent distance from their own professed ideology and the perceived ideology of the institution increases, legitimacy for the presidency decreases, but not for the other institutions. These findings may suggest that short-term approval affects this measure of legitimacy, given that, at the time of the survey, the United States House of Representatives was dominated by the Republican Party, while the President was the first African American President. These findings will be examined more closely in the next section.

Increasing age predicts decreased legitimacy for the Supreme Court only. And, increased education predicts increased legitimacy in Congress and the Supreme Court, but not in the presidency. These results, at least for the Court, conform to the established literature that education is a significant predictor of legitimacy.

Perception that the institution considers the people when making decisions is statistically significant for Congress and the presidency; however, as expected, it is not significant for the Supreme Court. This may be due to the fact that the Court is often considered to be arbiters of conflicts between two parties and, so, may be less attached to belief that it should consider the greater public in its decisionmaking. Additionally, with its inhabitants being unelected, the Court is not tied to public opinion in the same ways that Congress and the presidency are. Finally, for the Supreme Court and the presidency, increased attention to news also predicts increased legitimacy in the institution. Level of attention to news does not matter to legitimacy in Congress. This variable may be tapping into some level of respondent knowledge, albeit rather roughly. Now that we understand, for the first time, which factors influence institutional legitimacy for all three branches of American government, utilizing the traditional index

measure, I turn to a closer examination of the variables that are most often used to measure legitimacy.

### *Short- vs. Long-Term Considerations*

Short-term approval of an institution and/or its inhabitants is not institutional legitimacy. Therefore, measures of short-term approval must be handled distinct from measures of long-term support when examining legitimacy. I have already discussed the fact that trust (although, as we will see, it is not just trust that poses a problem) is, at best, misunderstood and, at worst, actively working against the intent of the legitimacy index. As such, it is important to unpack this index and take a closer look at trust and how it contributes to legitimacy. Table 5 reveals the results of regression analyses when trust has been disaggregated from the traditional legitimacy index and, instead, is utilized in the models for each institution as a stand-alone independent variable. In these models, perceptions that the institution uses fair procedures in its decisionmaking processes fulfills its role, attention to news, and trust all positively predict legitimacy, as expected. As was highlighted in Table 4, here too we see that, for Congress and the presidency, but not the Supreme Court, perception that the institution considers the interests of the people when making decisions leads to increased legitimacy for the institution. Again, this is a new understanding for the literature. As previously noted, this may be due to the fact that justices are not necessarily associated with needing to reflect the will of the people, but, perhaps, more so the rights of the individual. In this case, it would make sense that this variable would not be a large consideration for the courts as a predictor of legitimacy.

[Insert Table 5 Here]

Asians imbue all of the institutions with less legitimacy than any other race, which comports with other research that suggests that Asian Americans have less confidence in

American government than other races (Hero and Tolbert 2004). This is a change from the models in Table 1 that included trust in the legitimacy index. For the Supreme Court and Congress, increased education also seems to increase legitimacy for the institution, just as it did when trust was included in the index. While this finding is expected (Benesh 2006), it is interesting to find that education does not matter to legitimacy for the presidency. This is a new finding for the legitimacy literature. Further, females assign statistically significantly more legitimacy to the presidency than males. African Americans and Hispanics (along with Asians, as mentioned above) have less legitimacy for Congress, while conservatives assign more legitimacy to Congress. In this model, increasing age predicts decreased legitimacy in the Supreme Court.

Across all institutions, increasing trust significantly predicts increased legitimacy. This does not necessarily mean, however, that trust should be included in the legitimacy index. When trust is disaggregated from the index, findings change. Most notably, whereas Asians have no difference in terms of legitimacy for any institution when trust is included in the legitimacy index, they have significantly less legitimacy for all institutions than other races when trust is disaggregated. Likewise, Hispanics have less legitimacy for Congress when trust is disaggregated. When trust is included in the index, Republicans have significantly less legitimacy for the presidency, but when it is disaggregated, this significance evaporates. The significant and positive relationship that African Americans have for legitimacy in the presidency also disappears when trust is disaggregated. When trust is included in the index, increasing ideological distance predicts decreased legitimacy for the presidency, but when trust is removed from the index, this significant disappears. Finally, when trust is included in the index, increasing attention to news significantly predicts legitimacy for Congress; this was not



the case when trust is disaggregated. These findings highlight the fact that, perhaps, including trust in an index of legitimacy introduces short-term considerations into a measure of long-term support. It appears that, when trust is included in the legitimacy index, short-term influences matter to legitimacy. When it is removed, those things go away. Essentially, as we see, trust does play a role in predicting long-term legitimacy, but theoretically, it also plays a role, arguably larger, in short-term legitimacy. By including trust in a measure of long-term legitimacy, the impact that trust has on both short- and long-term legitimacy is lost. Also, perhaps it goes without saying, but if trust is capturing short-term sentiment much more so than long-term sentiment, then any long-term legitimacy index that includes that variable is critically undermining results and conclusions drawn from the analyses.

The concept of trust has, largely, been seen as driven by short-term considerations, but it has been institutionalized in an index of long-term legitimacy. This is confounding, in that, while trust has been shown to influence both specific and diffuse support, it seems to drive specific support much more so than diffuse (Gibson 2011). Given this, as well as the findings here, that removing the trust variable from the legitimacy index leads to significant changes in drivers of institutional legitimacy, it would seem that trust should be disaggregated from long-term institutional legitimacy measures. Additionally, it begs the questions of whether trust is the only component of the oft-used index that taps into short-term rather than long-term institutional legitimacy. Specifically, questions that ask about confidence in an institution, whether an institution favors groups, and whether an institution is too political may actually be activating considerations related to a respondent's feelings toward a particular occupant, or occupants, of an institution or their policies. It may be that respondents answer after having considered whether or not an institution is *currently* too political or *currently* favors certain groups over

others. I now turn to a closer examination of each of the variables included in the traditional legitimacy index, including critical analysis of the variables in the index that may be primarily tapping into specific, rather than diffuse, support.

Closer examination of the trust variable reveals that trust is much more closely correlated with other short-term measures in the index, including perceptions that the institution is too political, puts party interests first, and favors some groups over others. This holds true for all three institutions.

[Insert Table 6 Here]

In essence, there is a clear distinction between the questions used in the legitimacy measure; those that seem to capture short-term considerations or feelings about an institution (and, perhaps, the occupants of the institution), which is traditionally known as specific support, and those that are decidedly more deep-seated in nature (i.e., constitutional changes to the institution, doing away with the institution altogether), conceptualized as true diffuse support. Factor analysis can determine overall variability between correlated variables by identifying patterns and collapsing variables into requisite factors. Variables that highly correlate to explain a phenomenon – here, institutional legitimacy – will collapse into one factor, while those that correlate to explain a different phenomenon – here, short-term, or specific, support – will collapse into one, or more, separate factors. For all three institutions, factor analysis confirms that a clear distinction exists. Factor loadings reveal that the seven variables in the index of each institution are collapsing into two distinct clusters. For each institution, the variables about doing away with the institution and making constitutional changes to the institution load on a different dimension than do the questions about trust, confidence, putting party or politics first, and favoring certain groups or people over others. Substantively, this means that the variables in

the traditional legitimacy index are diverging, speaking to different concepts. For the Supreme Court, when loading onto the first factor, the variances for trust (0.8577), confidence (0.8594), putting party or politics first (0.6770), and favoring certain groups or people (0.7306) are grouped much closer together than the remaining variables, which group closer together: limit terms (0.0028), elect justices (0.0745), and do away with the institution (0.3555). For Congress, we see the same pattern. When loading onto the first factor, trust (0.8486), confidence (0.8471), putting party interests or politics first (0.6921), and favoring some groups or people over others (0.7595) cluster together, while restricting presidential appointments (0.0183), restricting the institution's ability to make its own rules (0.0508), and doing away with the institution (0.0720) group together (and load better on the second factor). Finally, the presidency exhibits similar findings, with trust (0.9030), confidence (0.8923), puts party interests or politics first (0.8518), and favors some groups or people over others (0.8195) group together and load best on the first factor. Conversely, limiting the president's ability to make lifetime appointments to the judiciary (0.0743), restricting the president's ability to veto legislation (0.1641), and doing away with the institution (0.1864) all group together and load better on the second factor.

[Insert Figures 2a, 2b, 2c Here]

I argue that those questions that countenance structural changes to the institution, all loading onto Factor 1, are most likely tapping into longer-term dispositions related to an institution. And, those remaining questions about trust, confidence, politics, and favoring certain groups, all loading onto Factor 2, are capturing short-term specific support. And, as it has been shown, these findings are theoretically supported. When these questions are broken into two indices – short- and long-term – we see that there is a real distinction between the two different

indices for each of the institutions. The short-term legitimacy index contains the following questions:<sup>36</sup>

- Overall, how much confidence would you say you have in [the United States Supreme Court; Congress; the President of the United States]?
- Overall, how much trust would you say you have in [the United States Supreme Court, which sits in Washington, D.C.; the President of the United States; Congress] to make decisions that are right for the country?
- The United States Supreme Court gets too mixed up in politics; and [Members of Congress; the President of the United States] put the interests of their/his/her party over the interests of the American people.
- The decisions made by the [United States Supreme Court; Congress; President of the United States] favor some groups more than others.

The long-term legitimacy index includes the following questions:

- If [the United States Supreme Court; Congress; the President of the United States] started making decisions that most people disagree with, it might be better to do away with the [institution] altogether.
- It would make no difference to me if the United States Constitution were rewritten to eliminate lifetime appointments of Supreme Court justices, limiting their terms to 20 years; AND, it would make no difference to me if the United States Constitution were

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<sup>36</sup> In addition to the factor analyses supporting these configurations, extant literature provides some support, as well. On the issue of trust, Mishler and Rose (2001) and Keele (2005) argue that trust is influenced by short-term measures. Lipset and Schneider (1983) show that a drop in confidence does not translate to a drop in institutional legitimacy. Additionally, Hibbing and Theiss-Morse (1995; 2002) make the case that the business of politics is distasteful to the public and that inhabitants of institutions suffer when they are perceived as being overly political – a short-term affect.

rewritten to provide for the election of Supreme Court Justices by the people, rather than appointment by the President.

- It would make no difference to me if the United States Constitution were rewritten to reduce Congress' power to approve or deny presidential appointments; AND, it would make no difference to me if the United States Constitution were rewritten to reduce Congress' power to make its own procedural rules, such as the filibuster.
- It would make no difference to me if the United States Constitution were rewritten to reduce the President's power to make lifetime appointments to the judiciary; AND, it would make no difference to me if the United States Constitution were rewritten to reduce the President's power to veto congressional legislation.

[Insert Figures 3a and 3b Here]

When we compare mean levels of institutional legitimacy (coded so that an increasing mean translates to increasing legitimacy) between the two indices –short- and long-term – we see that our traditional understanding, and the understanding mirrored in the research here earlier (see Figure 1), is much more nuanced than previously considered. Figures 3a and 3b reveal that the Supreme Court is not, necessarily, the “most legitimate” of American government institutions. The findings of the short-term index comport with the findings revealed with the traditional legitimacy index – that Congress suffers with the lowest levels of legitimacy, the Supreme Court enjoy the most, and the presidency falls in-between. When the legitimacy index is comprised of only clear long-term measures, this picture changes. Here, the presidency enjoys the most legitimacy, while the Supreme Court and Congress hold nearly identical levels of legitimacy, with Congress enjoying just a fraction more than the Supreme Court. These findings flip convention wisdom on its head. With the traditional legitimacy index, the Supreme Court

enjoys the most legitimacy, while Congress enjoys the least. When we include just long-term variables in the legitimacy index, however, the Supreme Court enjoys the least legitimacy. Indeed, should these results hold true over time, the institution of the presidency may be perceived as the most legitimate institution. Table 7 highlights mean respondent support for each of the variables in the traditional legitimacy index, derived from the scale for each variable (the range for each was 0-4, such that increasing numbers equate to increasing support in that area). For each institution, there is a column for short-term variables and a column for long-term variables. The results for short-term support bear out much like the mean results of traditional legitimacy – the Supreme Court enjoys the most, while Congress enjoys the least. The story changes dramatically, however, when the average of means for long-term legitimacy are compared. Here, the presidency enjoys the highest legitimacy (2.0690), while the Supreme Court has the least (1.7612). For the short-term legitimacy index, for each institution, the perception that the institution favors some groups over others pulls legitimacy down, and for the long-term legitimacy index, unwillingness to do away with the institution, even if it consistently makes decisions that run counter to majority public opinion, for all three institutions, pulls institutional legitimacy up. As mentioned earlier, with levels of institution legitimacy being tied to the ability to legitimate policy and, thus, enhance public acceptance of policy, these findings have, potentially, important implications for policy development in the United States.

[Insert Table 7 Here]

Table 8 sketches a legitimacy continuum – change in respondent level of professed legitimacy for institutions – for both the short- and long-term indices (from low legitimacy to high legitimacy), allowing a comparison of legitimacy levels across institution based on each of these indices. Here, the numbers reflect the percentage of respondents that exhibit those levels

of legitimacy for each of the institutions, dependent on whether the index includes on short- or long-term variables.

[Insert Table 8 Here]

For all three institutions, there is a significant difference between the picture of legitimacy for the institution we obtain when only short –term measures are included in the index, as opposed to an index composed of only long-term measures of support for the structure of the institution. For the Supreme Court, when only short-term measures are included, 2.95% of respondents profess high legitimacy, as compared to 15.44% when only long-term measures are included. For Congress, 0.17% of respondents express high legitimacy with the short-term index, while 15.58% express high legitimacy with the long-term index. And, for the presidency, 5.25% express high legitimacy with the short-term index, as opposed to 25.68% expressing high legitimacy with the long-term index. For all institutions, respondents express higher degrees of institutional legitimacy when the index contains only long-term measures than when it contains only short-term measures. Conversely, for all three institutions, respondents express much greater levels of low legitimacy with the short-term measures, as compared to the long-term index. This supports my argument(s) that certain measures in the traditional legitimacy measure are capturing long-term sentiment for institutions than others. In fact, some measures are clear measures of short-term support for institutions. Specifically, questions about changes to the constitutional structure of institutions and doing away with the institution are tapping into long-term support for institutions, while questions about favoring certain groups, confidence in institutions, trust in institutions, and getting too mixed up in politics are tapping into shorter-term sentiments. As such, it comes as no surprise that we would see respondents expressing higher

degrees of legitimacy in all institutions when only these long-term measures are included in the index than when only short-term measures are included in the index.

Further evidence is revealed when each of the variables in the short-term index is utilized as a separate dependent variable to model the predictors of each variable. The goal is to determine if short-term legitimacy influences short-term variables and long-term legitimacy influences long-term variables, in an effort to ascertain that these groupings of variables, as conceptualized, are actually acting within their respective short- and long-term capacities. Tables 9a, 9b, and 9c do just this, with the primary independent variables in each of the models being the short- and long-term legitimacy indices. The short-term legitimacy index utilized in each model lacks the variable that is utilized as the dependent variable in that model. Each of the dependent variables is coded such that positive signage equates to increased support for the institution.

Ordinary Least Squares Regression reveals that ideological distance has an inconsistent role in explaining each of the short-term variables. Ideological distance explains none of the short-term variables for Congress. For the presidency, increased ideological distance predicts decreased trust and increased perception that the presidency favors some groups over others. And, for the Supreme Court, increased ideological distance predicts decreased confidence and increased perception that the Court favors some groups over others. These inconsistencies provide further support for Gibson and Nelson (2014), that ideological distance is not a significant predictor of institutional legitimacy (see Tables 4 and 5) or short-term legitimacy.

In addition, short-term legitimacy predicts all short-term variables for all three branches of government, such that as short-term legitimacy increases, so does institutional trust, institutional confidence, lower perception that the institution puts party or political interests first,



and lower perception that the institution favors some groups over others. Long-term legitimacy, on the other hand, plays a much weaker role in explaining each of the dependent variables. Indeed, for Congress, long-term legitimacy predicts none of the short-term variables, and for the presidency, it only predicts trust. For the Supreme Court, on the other hand, long-term legitimacy is more intertwined with the short-term variables, predicting trust, party/political interest, and favors groups. This may be due to the fact that respondents are more “shocked” when the Court is involved in these activities, given its perceived role as above politics, and, so, there is a disparate impact on legitimacy if respondents believe that the Court is somehow entangled in these practices or behaviors. This is a fascinating finding, in that it suggests that, perhaps, institutional legitimacy might need to be measured differently for each of the branches of government. It may be that short- and long-term variables are more, or less, short- or long-term, contingent on the institution. For instance, variables that definitely tap into short-term support for one institution may tap into long-term support for another. Here, perhaps, short-term perturbations may not impact overall institutional legitimacy for Congress or the presidency as much as they may for the Court. This is supported by Gibson (2009), which argues that perceptions that the Court gets too mixed up with politics or interest groups can influence the Court’s legitimacy over time; however, this research was conducted in a vacuum, with no comparison to other institutions supporting the theory. Here, for the first time, comparative analysis confirms the argument. The findings here reveal that 1) the Supreme Court’s institutional legitimacy is impacted by the perception that it engages in political behavior in ways that do not affect legitimacy for Congress or the presidency, and 2) perhaps, the legitimacy of Congress and the presidency are insulated from deteriorating legitimacy, hinging on these factors, because those two institutions are expected to engage in “politicking,” whereas the Court

is expected to remain removed from it. Therefore, when Congress and the presidency engage in politics, they receive no ramifications, but when the Supreme Court engages in it, it is punished. These findings further supports the argument I am making here, that great attention must be paid to the variables included in an institutional legitimacy index.

[Insert Tables 9a, 9b, and 9c Here]

In an attempt to further understand this phenomenon, I have run models of short- and long-term institutional legitimacy separately, in which the dependent variables for each model are the disaggregated measures of the other legitimacy index, to determine which, if any, are driving the two differing levels of legitimacy. So, in the long-term legitimacy models, trust, confidence, perception that the institutions favors some groups over others, and perception that the institution is too political or puts party interests first, are utilized as independent variables. And, in the short-term legitimacy models, willingness to do away with the institution and support for constitution changes to the institutional structure are used as independent variables of interest.

[Insert Tables 10a and 10b Here]

The results of the model of long-term legitimacy (see Table 10a) highlight the fact that 1) short-term indicators drive, in some capacity, long-term institutional legitimacy for all three branches of government, and 2) the critical variables differ across branches. But, they differ in understandable ways. For Congress, long-term institutional legitimacy is driven by none of the short-term legitimacy variables. For the presidency, long-term institutional legitimacy is driven by trust and perception that the institution puts politics or political party interests before the people. For the Supreme Court, institutional legitimacy is driven by trust and the perception that the institution puts politics or party first. These are incredibly interesting findings. First, and to

reiterate, these findings provide evidence that short-term factors influence long-term sentiment for each institution. This, alone, is new ground. But, the factors that influence each are also illuminating. Congressional legitimacy is not influenced by perceptions that it puts party or political interests first, or influence peddling. This makes sense, because Congress is often considered to be a political body that is subject to the changing winds of public opinion. These findings suggest that the American public is aware of that and, therefore, does not punish the institution if it behaves politically. Individual members may be punished at election season, but the legitimacy of the institution does not suffer. Presidential legitimacy is also driven by trust, but also by perception that the office puts political or party interests before the public. At first blush, this seems confounding; however, if you consider the role of the presidency (as outlined in Chapter II), as being a representative of the people, of needing to consider the best interests of the whole American public, then it makes sense that the institution would be harmed by perceptions that the office does, at turns, put political or party interest first. So, when this happens, the institution, as a whole, suffers. Finally, the Court's legitimacy is driven by trust and the perception that the institution puts political or party interests before the interest of the people. Again, this makes sense, when considering, as has been mentioned, that the Court is expected to be above politics, free of influence from outside interests. When the Court is perceived to have become involved in these activities, its long-term institutional legitimacy deteriorates.

Some interesting demographic patterns emerge, as well. Increasing education and attention to news informs long-term institutional legitimacy for all institutions. Increasing age leads to less legitimacy in the Supreme Court. Asians have less long-term institutional legitimacy in all institutions, while African Americans and women have less in Congress. Conservatives have more long-term institutional legitimacy in the Supreme Court.

In addition, increased ideological distance between a respondent and his/her perception of an institution matters to long-term legitimacy in the Supreme Court and presidency, such that ideological distance increases, long-term institutional legitimacy increases. This is an interesting finding, but may suggest that long-term sentiment for an institution is truly impervious to short-term fluctuations. In fact, the expectation may be that the inhabitants and, thus, outcomes, change occasionally. This may be, in its truest form, a reflection of American democracy in action. If so, then it makes sense that respondents might actually have a stronger sense of long-term institutional legitimacy when they see this occurring, even when it means that, at times, they may be more, or less, ideologically distant from an institution and its outcomes.

Finally, the perception that the institution fulfills its role matters to legitimacy in the Supreme Court and the presidency, and the perception that the institution uses fair procedures matters to long-term institutional legitimacy in the Supreme Court and Congress. The perception that the institution considers the people when making decisions is significant to long-term legitimacy in all institution, but it is positively related to Congress and the presidency, and negatively related to the Supreme Court. This may, again, be capturing the idea that the Supreme Court is not, necessarily, expected to consider the wishes of the public when it makes decisions.

Likewise, some long-term institutional legitimacy variables also predict short-term institutional legitimacy (see Table 10b). As respondent willingness to do away with the Supreme Court or Congress increases, short-term legitimacy is impacted. For Congress, short-term legitimacy decreases (as might be expected), but for the Supreme Court, short-term legitimacy increases. Also, the increasing belief that the terms of Supreme Court justices should be limited and that the ability of Congress to confirm presidential appointments should be eliminated, if

each institution were to making a large number of decisions that run against public opinion, leads to increased short-term legitimacy for both institutions. These findings may seem confounding; however, they may also reflect a sense of empowerment on the part of the respondent, such that when s/he believes that there are very real actions that could be taken to limit the power of these institutions if they started to run against public opinion could actually increase short-term legitimacy in the institutions. Perhaps it leads to an increased sense that the institutions would be less likely to make “bad” decisions if the people occupying them are well aware that they could lose real power if they do.

Additionally, women have more short-term legitimacy in the Supreme Court and the presidency. African Americans and Asians also have more in the presidency, while Republicans have less in the presidency. Conservatives have less short-term legitimacy in the Supreme Court, and more in Congress. Also, increased attention to news predicts less short-term legitimacy in the Supreme Court and Congress. These findings highlight a short-term affect for the institutions in very real terms. At the time of the survey, the president was an African American Democrat, so it is expected that African Americans might have enhanced short-term legitimacy in the office, and Republicans would have less. The House of Representatives was controlled by Republicans, and this may explain why conservatives have more short-term legitimacy in Congress.

Finally, for all three institutions, the perception that the institution fulfills its role, uses fair procedures, and considers the people when making decisions significantly predicts short-term legitimacy. These findings suggest that structural and demographic variables inform our short- and long-term institutional legitimacy.

Knowing this, the next question is what variables drive each of the indices – short- and long-term, fully constructed. So, here, I am interested in determining, very specifically, how short- and long-term legitimacy for each of the institutions is predicted. Table 8 highlights the results of regression analyses, in which the dependent variable, legitimacy, is modeled separately as short-term and long-term. The question here is whether different variables predict short-versus long-term legitimacy for American governmental institutions. I expect that the questions about the institution fulfilling its role and using fair procedures will significantly impact long-term legitimacy for the institutions. The variable measuring whether the institution considers the people should matter to institutional legitimacy for Congress and the presidency. Given conflicting extant literature on the subject (Bartels and Johnston 2013; Gibson and Nelson 2014), as well as the findings here, I expect ideological distance to not matter, especially to true long-term legitimacy. Further, I expect that certain demographic variables should matter in the short-term, but not the long-term. For instance, given that the president at the time of the survey was a Democrat, I expect that conservatives and Republicans will have less short-term legitimacy for the presidency. On the other hand, given that the president at the time of this survey was also the first African American president, I expect African Americans to have greater short-term legitimacy for the presidency. I also expect that conservatives and Republicans will have less short-term legitimacy for the Supreme Court, as Republicans had much lower approval for the Court than other Americans at the time of this survey.<sup>37</sup>

[Insert Table 11 Here]

Perceptions that the institution fulfills its role, uses fair procedures (except for long-term legitimacy for the presidency), and considers the people when making decisions are significant

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<sup>37</sup> See [http://www.gallup.com/poll/184160/republicans-approval-supreme-court-sinks.aspx?utm\\_source=alert&utm\\_medium=email&utm\\_content=heading&utm\\_campaign=syndication](http://www.gallup.com/poll/184160/republicans-approval-supreme-court-sinks.aspx?utm_source=alert&utm_medium=email&utm_content=heading&utm_campaign=syndication)

for all models of legitimacy – short- and long-term. All are positively signed, except for perceptions that the Supreme Court considers the people when making decisions, which is in keeping with an earlier finding (see Table 11). It seems that perception that the Supreme Court considers the people when making decisions predicts decreased long-term legitimacy for the institution. As mentioned earlier, this this may be related to the idea that respondents do not believe that the Court should be considering the mass public when making decisions. Instead, perhaps, courts are perceived as resolving individual conflict between parties. Also, the Court, being removed from the election process, may also be seen as less accountable, leading to less public perception that the Court should be expected to consider public opinion in its decisionmaking processes. There is no significant difference between the influence of commitment to institutions – as captured by the variables about role fulfillment, fair procedures, and considering the people – for short- versus long-term legitimacy, which has been captured by previous models presented here (see Tables 4, 5, 9a, 9b, and 9c). This leads me to believe that these variables matter to both job approval *and* enduring support for the institution.

Attention to news, which may be acting as a proxy for knowledge (although, this is far from definite) reveals that increased attention to news predicts increased long-term legitimacy for all three institutions, and decreased short-term for the Supreme Court and Congress. This may reveal that avid news watching, in the aggregate, increases knowledge and, thus, impacts long-term legitimacy in the positive; however, at the individual level, short-term legitimacy may be taking a hit as respondents consider specific, salient news stories that, again, may be activating some form of evaluation of job approval.

Finally, results show that certain demographic characteristics do seem to matter differentially for short- versus long-term legitimacy. For instance, as expected, African

Americans have significantly more short-term legitimacy for the presidency than do other races; however, they have significantly less long-term legitimacy for Congress. Also as expected, Republicans have significantly less short-term legitimacy for the presidency, while conservatives have significantly more short-term legitimacy for Congress, than do moderates/liberals and Independents/Democrats. Conservatives also have significantly less short-term, and significantly more long-term, legitimacy for the Supreme Court. Asians have significantly less long-term legitimacy for all branches, suggesting that Asians tend toward less support for government, overall, but they do exhibit higher short-term legitimacy for the Supreme Court. Females have significantly less long-term legitimacy for Congress and significantly more short-term legitimacy in the presidency than do males. Increasing education predicts increased long-term legitimacy for all branches. Increasing age predicts decreased long-term legitimacy for the Supreme Court. And, ideological distance is inconsistent, with it significantly mattering to short- and long-term legitimacy for the Supreme Court and the presidency, but not at all for Congress. Increasing ideological distance predicts decreased short-term legitimacy for the Supreme Court and the presidency, while increasing ideological distance predicts increased long-term legitimacy for both institutions. While this does not settle the debate between Bartels and Johnston (2013) and Gibson and Nelson (2014), it does offer a new perspective; that ideological distance matters differentially to the institutions. For the Supreme Court and the presidency, it makes sense that short-term legitimacy would be negatively impacted by increasing ideological distance. It seems that people do, in fact, evaluate these institutions negatively, in the short-term, when they feel as if the institution (its inhabitants and/or its outcomes) does not share their own ideological perspective. The significant and positive findings on this variable for the Supreme Court and the presidency are more confounding, however. Here, it may be that people expect institutions, in



the long-term, to fluctuate in membership and outcomes, as functions of their design. This would mean that, at times, institutions will be ideologically divergent from an individual and his/her preferences. Perhaps, when people see this happening, it comports with democratic expectations and, therefore, leads to an increased legitimacy in the institutions.

In short, these findings suggest that it is important to consider that legitimacy can exist in both short- and long-term capacities, and that each is influenced by different variables, and that each taps into a distinct phenomenon. Indeed, when short- and long-term considerations are evaluated distinctly from each other, we see interesting things, such as the fact that African Americans hold significant short-term legitimacy for the presidency, but not long-term, due, perhaps to the presence of the first African American president. Additionally, the fact that conservatives and Republicans exhibit significantly lower levels of short-term legitimacy for the presidency, but are no different from other partisan identifiers in terms of long-term legitimacy, suggests that the measures I consider “short-term” are tapping policy agreement/approval expectations while the long-term legitimacy measures are tapping something else.

## **CONCLUSION**

Heretofore, studies of legitimacy have been limited to court literature. As a result, we have known what drives legitimacy for the Court and have speculated that high levels of legitimacy explain the Court’s ability to legitimate policy. Until now, however, we have not been able to compare what drives legitimacy on the courts with what drives legitimacy on the legislative and executive branches, or even really compare their levels using the same metric. Some research suggests that the courts are often “most-loved” because the media portrays the institution as being apolitical (Hibbing and Theiss-Morse 2002), while focusing much harsh coverage on Congress (Hibbing and Theiss-Morse 1995). Additionally, Hibbing and Theiss-

Morse (2002) argue that the American public prefers the courts over the other branches of government, in part, because we value consensus in the policymaking process. Since decisionmaking in the courts is often made out of sight, we get the impression that the courts are much more congenial than the more visible and rancorous decisionmaking in Congress and the presidency. The analysis here provides a true comparison and suggests that those factors that matter to judicial legitimacy also matter to the legitimacy of the legislative and executive branches. In essence, the belief that the institution fulfills its role and that the institution uses fair procedures in decisionmaking positively impacts legitimacy for each of the branches. These findings do not refute Hibbing and Theiss-Morse (2002) outright; however they offer an expanded context that must be considered when explaining institutional legitimacy. Hibbing and Theiss-Morse (1995; 2002) suggest that it is the Court's high legitimacy that allows it to legitimate policy and, thus, enhance acceptance. I argue that, while the Court may be able to legitimate policy more so than the other branches (Chapter V provides a more thorough analysis of this), it is not necessarily due to its legitimacy. In fact, as shown here, when institutional legitimacy is examined utilizing only long-term measures, the Court does not appear to be as legitimate as we have thought. In fact, when measuring with solely long-term variables, the presidency enjoys the most institutional legitimacy.

Further, the analysis provided here highlights some vulnerabilities with the legitimacy index as it has been comprised and utilized to study the courts. Legitimacy theory argues that legitimacy is an enduring loyalty to an institution. As such, any measures of legitimacy should also tap into enduring, long-term feelings toward an institution. Of the measures that have traditionally comprised the legitimacy index, some are clearly measures of support for the institution, while others are clearly short-term measures of support for policies or people in them.

This poses a theoretical challenge to the legitimacy literature, which argues that “measures that purport to tap into support for the institution ought to be measures that ask respondents to countenance structural change in the judicial institution” (Weinschenk, Fettig, and Benesh, 2013, 17). Taken together, the results here suggest, at least preliminarily, that trust is actually a more appropriate measure of specific support. But, the inferences do not stop with trust. The findings also suggest that three other variables consistently used to measure diffuse support (gets mixed up in politics/puts party interests first, favors some groups over others, and confidence) might also be better indicators of specific support for an institution. While these results are somewhat expected, given recent research done by Weinschenk, Fettig, and Benesh (2013), the role that trust plays in institutional legitimacy is far from settled. Further, the findings outlined here suggest that, perhaps, the scholarship on legitimacy is underdeveloped and may need a new conceptualization if we are to speak accurately about institutional legitimacy and, thus, policy acceptance emanating from those institutions. As such, it is extremely important that future research focus heavily on examining and explaining both legitimacy and trust in American governance. Here, not only do I argue that the traditional variables in the legitimacy index should be disaggregated and examined, but I also argue that questions seeking to capture long-term support must be relevant to the specific institution. Therefore, instead of asking if respondents would countenance constitutional changes to the structure of the institution, I asked respondents questions unique to the specific institutions (see the previous chapter for question wording). As a result, I can be comfortable that, when voicing legitimacy for an institution, respondents were considering very real and possible changes to actual constitutional powers imbued in that institution. I have shown that these variables, along with the question of doing away with the institution if it started making a string of “bad” decisions, are more closely

correlated to each other than they are to questions about decidedly more short-term behaviors or actions that may be more associated with the inhabitants of an institution, as opposed to the institution itself.

It has been argued that both trust (Gibson 2011) and confidence (Gibson, Caldeira, and Spence 2003) are measures of both short- and long-term legitimacy, but that each is much closer to a measure of specific, rather than diffuse, support. My findings comport with this, with factor analysis revealing that trust and confidence hang much closer to other short-term variables in the index – perception that the institution favors some groups/people over others and the perception that the institution gets too mixed up in politics/puts party interests first. When two separate indices are created, one comprised of solely these short-term measures, and one comprised of long-term measures, we see that this impacts conclusions drawn about respondents’ perceptions of legitimacy. For each institution, a higher percentage of respondents assign higher levels of legitimacy to each branch when the index contains only long-term measures, as compared with an index containing only short-term measures (see Table 7). Conversely, for each branch, a higher percentage of respondents assign lower levels of legitimacy to each branch when the index contains only short-term measures, than when the index contains only long-term measures. While this is not definitive proof that these short-term measures do not measure legitimacy, it does suggest that further investigation is necessary if we want to be able to say something substantively interesting about the role that these measures play in governance and institutional legitimacy. Some evidence has been provided here that short-term measures do impact institutional legitimacy, and that the measures that matter to each institution are rooted in the role that each institution plays in our American system of government. For instance, Supreme Court legitimacy is negatively impacted by the perception that it puts politics or party interests before

the public interest and that it favors some groups over others. This may be due to the fact that the Court is expected to be apolitical, removed from the influence of electoral politics and public opinion. Congressional legitimacy, on the other hand, is not impacted by these factors, perhaps because the institution is expected to participate fully in the political process, warts and all. Finally, presidential legitimacy is negatively affected by the perception that the office puts politics or party interests first, and this may be due to the fact that the President is expected to represent all Americans, and not just his/her party.

While the findings here move the debate forward, our understanding of institutional legitimacy is far from settled. We still need more research into the influence of short- and long-term indicators of legitimacy in our American institutions. It is well established that the health of a democracy stands (and falls) on the acquiescence of its people. If legitimacy is truly an enduring loyalty to an institution, then we must be able to parse short- from long-term indicators of this loyalty in order to accurately measure it and determine which factors are influencing the standing of our governing bodies with the public. And, by doing so comparatively, we can track how specific actions taken by those bodies influence both short- and long-term support for the institution. Here, I have offered a new understanding of what influences legitimacy across the three branches of American government, as well as a fresh perspective on the individual variables in the traditional legitimacy index. I argue that some measures are inadequate measures of institutional legitimacy and, as such, should not be included in the index, but that they are still valuable indicators of legitimacy. While they do not measure long-term institutional support, they do impact that support in critical ways. In an effort to advance the conversation started here, and in keeping with the findings highlighted in this chapter, all

relevant models in this dissertation will include indices of short- and long-term legitimacy separately as independent variables, unless otherwise noted.

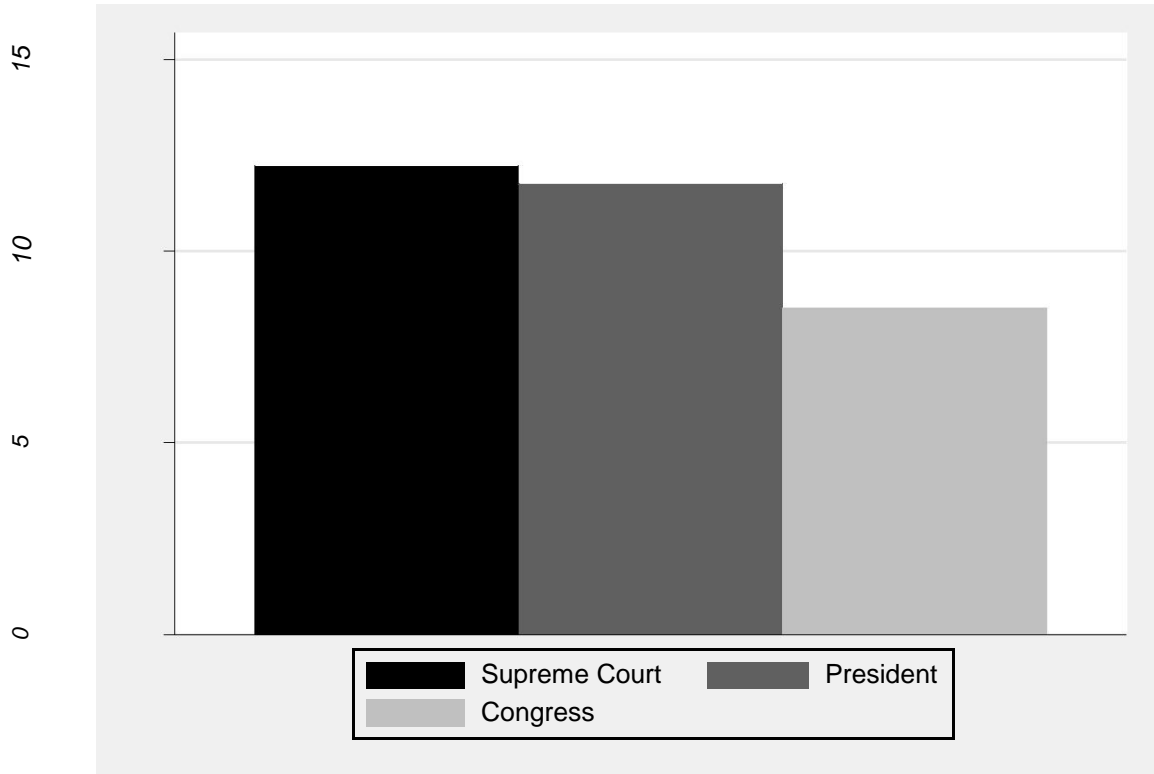
**Table 4: Institutional Legitimacy<sup>38</sup>**

\*p&lt;.1; \*\*p&lt;.05; \*\*\*p&lt;.01

	<b>Supreme Court</b>	<b>Congress</b>	<b>Presidency</b>
Female	0.08605 (0.1232)	-0.1765 (0.1442)	<b>0.2914**</b> <b>(0.1334)</b>
Black	-0.0446 (0.2424)	<b>-0.6703**</b> <b>(0.2741)</b>	<b>0.4816*</b> <b>(0.2625)</b>
Asian	-0.2647 (0.2485)	<b>-0.4709*</b> <b>(0.2853)</b>	-0.4287 (0.2750)
Hispanic	-0.0486 (0.2886)	-0.4488 (0.3344)	-0.1111 (0.3126)
Conservative	0.0291 (0.1883)	<b>0.6949***</b> <b>(0.2614)</b>	-0.1974 (0.2350)
Republican	-0.2019 (0.2019)	0.3905 (0.2596)	<b>-0.4586***</b> <b>(0.2263)</b>
Ideological Distance	-0.0338 (0.0560)	-0.0277 (0.0727)	<b>-0.2380***</b> <b>(0.0803)</b>
Education (Increasing)	<b>0.2215***</b> <b>(0.0388)</b>	<b>0.1228***</b> <b>(0.0451)</b>	0.0618 (0.0421)
Age (Increasing)	<b>-0.0994**</b> <b>(0.0406)</b>	0.0611 (0.0475)	-0.0082 (0.0441)
Family Income (Increasing)	-0.0011 (0.0194)	-0.0128 (0.0227)	-0.0177 (0.0211)
Institution Fulfills Role	<b>1.1268***</b> <b>(0.1165)</b>	<b>0.8755***</b> <b>(0.1367)</b>	<b>1.4264***</b> <b>(0.1334)</b>
Institution Uses Fair Procedures	<b>1.1871***</b> <b>(0.1083)</b>	<b>1.1767***</b> <b>(0.1281)</b>	<b>1.3900***</b> <b>(0.1254)</b>
Institution Considers People	0.1300 (0.0827)	<b>0.9600***</b> <b>(0.1155)</b>	<b>1.4103***</b> <b>(0.1113)</b>
Attention to News	<b>0.1341***</b> <b>(0.0311)</b>	0.0131 (0.0365)	<b>0.1593***</b> <b>(0.0340)</b>
N=	1638	1349	1626
Adj/Pseudo R <sup>2</sup>	0.3012	0.4085	0.6232

<sup>38</sup> In this model, institutional legitimacy is an additive index of seven oft-used questions in the legitimacy literature – trust in the institution, confidence in the institution, perception that the institution favors some groups or people over others, perception that the institution puts party interests before the people, and then two questions each that are specific to the particular institution that reflect a structural change to the institution (see Chapter II). All variables are coded, such that a positive increase in coefficient reflects an increase in legitimacy. Note that the perceptions that the institution fulfills its role and uses fair procedures predict institutional legitimacy for all branches of government. The perception that the institution considers the people predicts legitimacy for Congress and the presidency, but not the Supreme Court. This may be capturing some countermajoritarian sentiment for the Court.

**Figure 1: Institutional Legitimacy (Mean) – Full Traditional Index<sup>39</sup>**



<sup>39</sup> This graph reflects the mean response of institutional legitimacy, when the index includes the traditional variables. Here, it is apparent that, when employing the traditional legitimacy index, the Supreme Court outperforms the other branches; however, the presidency shares near equal space.



**Table 5: Institutional Legitimacy (Trust Disaggregated)<sup>40</sup>**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	Supreme Court	Congress	Presidency
Female	0.0991 (0.1199)	<b>-0.2170*</b> <b>(0.1293)</b>	<b>0.2186**</b> <b>(0.1065)</b>
Black	-0.2112 (0.2359)	<b>-0.6114**</b> <b>(0.2457)</b>	0.1782 (0.2099)
Asian	<b>-0.4920**</b> <b>(0.2419)</b>	<b>-0.5479**</b> <b>(0.2558)</b>	<b>-0.6164***</b> <b>(0.2197)</b>
Hispanic	-0.2216 (0.2808)	<b>-0.5333*</b> <b>(0.2998)</b>	-0.1726 (0.2496)
Conservative	0.2269 (0.1833)	<b>0.5355**</b> <b>(0.2345)</b>	-0.1868 (0.1876)
Republican	-0.1696 (0.1964)	0.3528 (0.2327)	0.1113 (0.1817)
Ideological Distance	-0.0622 (0.0550)	-0.0064 (0.0652)	0.0683 (0.0649)
Education (Increasing)	<b>0.1883***</b> <b>(0.0378)</b>	<b>0.1278***</b> <b>(0.0404)</b>	0.0135 (0.0337)
Age (Increasing)	<b>-0.1061***</b> <b>(0.0395)</b>	0.0698 (0.0425)	-0.0308 (0.0353)
Family Income (Increasing)	-0.0194 (0.0189)	-0.0023 (0.0203)	-0.0181 (0.0168)
Institution Fulfills Role	<b>0.8389***</b> <b>(0.1184)</b>	<b>0.2696**</b> <b>(0.1270)</b>	<b>0.7360***</b> <b>(0.1090)</b>
Institution Uses Fair Procedures	<b>0.7874***</b> <b>(0.1117)</b>	<b>0.5506***</b> <b>(0.1199)</b>	<b>0.4870***</b> <b>(0.1045)</b>
Institution Considers People	-0.0905 (0.0819)	<b>0.5676***</b> <b>(0.1057)</b>	<b>0.5867***</b> <b>(0.0930)</b>
Attention to News	<b>0.1256***</b> <b>(0.0303)</b>	<b>0.0732**</b> <b>(0.0329)</b>	<b>0.1467***</b> <b>(0.0271)</b>
Trust in Institution (Increasing)	<b>1.3385***</b> <b>(0.1012)</b>	<b>0.9853***</b> <b>(0.1097)</b>	<b>1.6050***</b> <b>(0.0861)</b>
N=	1638	1349	1626
Adj/Pseudo R <sup>2</sup>	0.3963	0.3480	0.6320

<sup>40</sup> Here, the traditional legitimacy additive legitimacy index is employed to explain comparative legitimacy across institution; however, trust has been disaggregated and is, instead, utilized as an independent variable. Again, we see that the perception that the institution considers the people is not a significant indicator of Supreme Court legitimacy, further suggesting that the Court is insulated from public opinion.

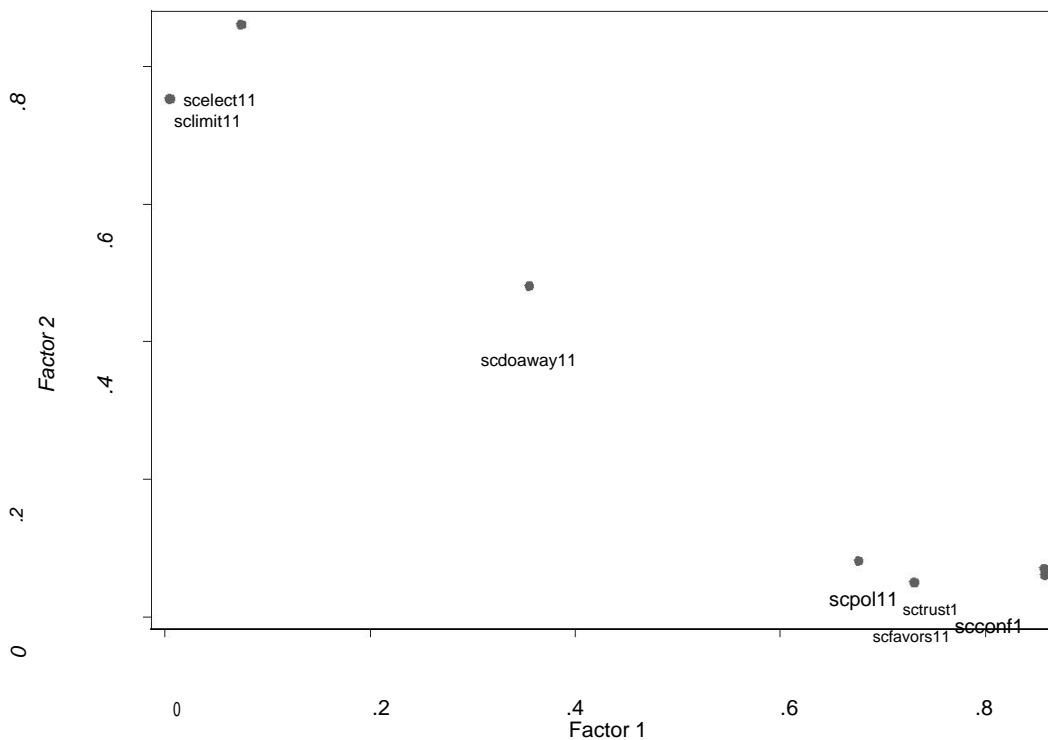
**Table 6: Legitimacy Index Variable Correlations<sup>41</sup>**

	<i>Supreme Court</i>		<i>Congress</i>		<i>Presidency</i>
	Trust		Trust		Trust
Trust	1		1		1
Too Political	.4082		.3838		.6829
Favors Some Groups	.4606		.4578		.6212
Limit Terms (Change Constitution)	.0721		.0690		.1917
Elect Justices (Change Constitution)	.1471		.0831		.2675
Do Away	.2859		.0954		.2571
Confidence	.7860		.7855		.8766

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<sup>41</sup> This table reflects correlations between each of the variables in the legitimacy index with each of the other variables. The results highlight that, for each of the institutions, trust, confidence, perception that the institution is too political, and perception that the institution favors some groups over others correlate at much higher levels than do structural changes to the institution (change the constitution to limit terms and elect justices) and commitment to doing away with the institution.

Figure 2a: Factor Loading Plot (Supreme Court): Legitimacy Variables<sup>42</sup>

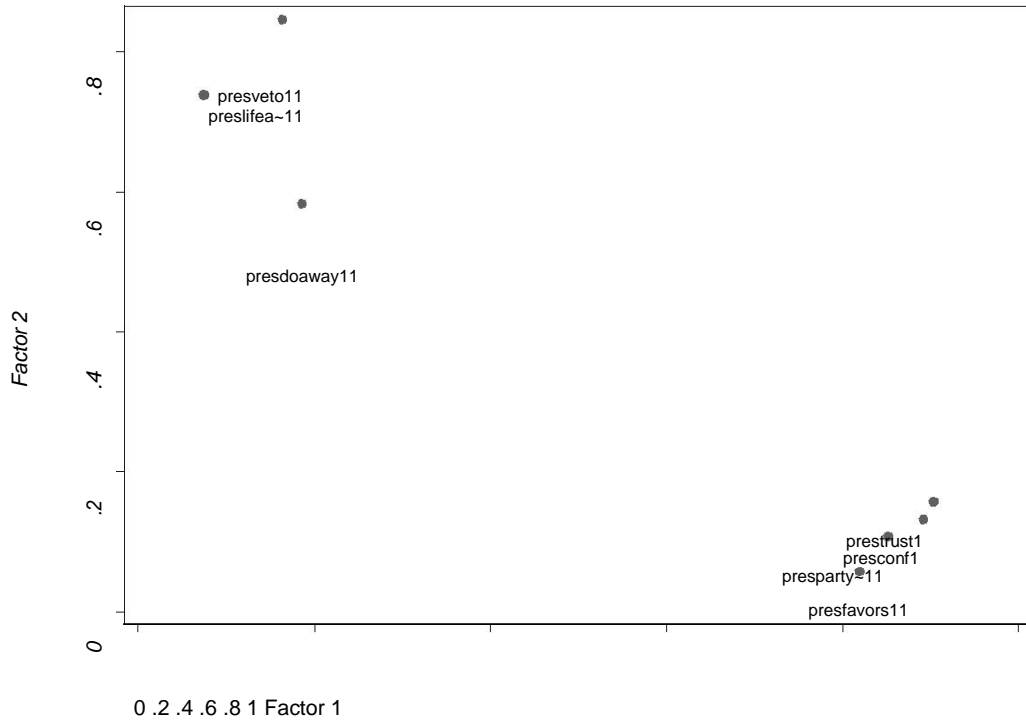


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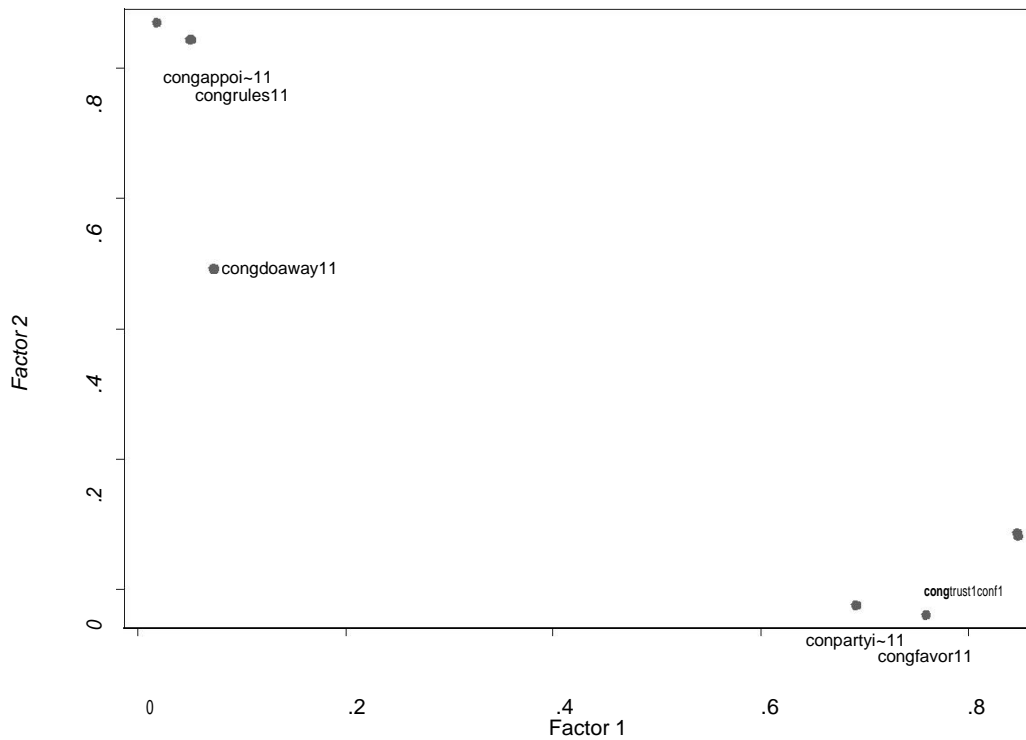
<sup>42</sup> For Figures 2a, 2b, and 2c (graphic representation of factor analysis) it is apparent that the legitimacy index variables cluster together distinctly. The variables capturing trust, confidence, perception that the institution favors some groups over others, and perception that the institution is too involved in politics all load together, and can be seen in each of these figures grouped in the bottom right corner. On the other hand, the structural variables, along with willingness to do away with the institution, all load together on a different factor, and cluster closer to the upper left corner of each figure, as can be seen here.



**Figure 2b: Factor Loading Plot (President): Legitimacy Variables**

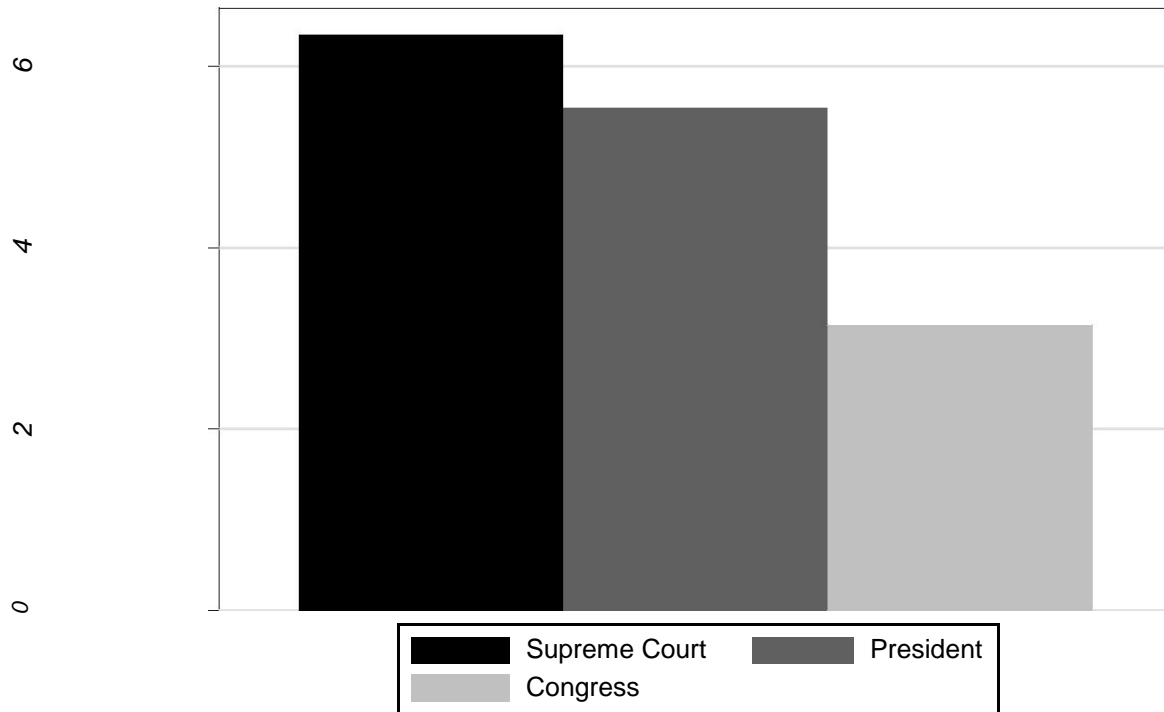


**Figure 2c: Factor Loading Plot (Congress): Legitimacy Variables**



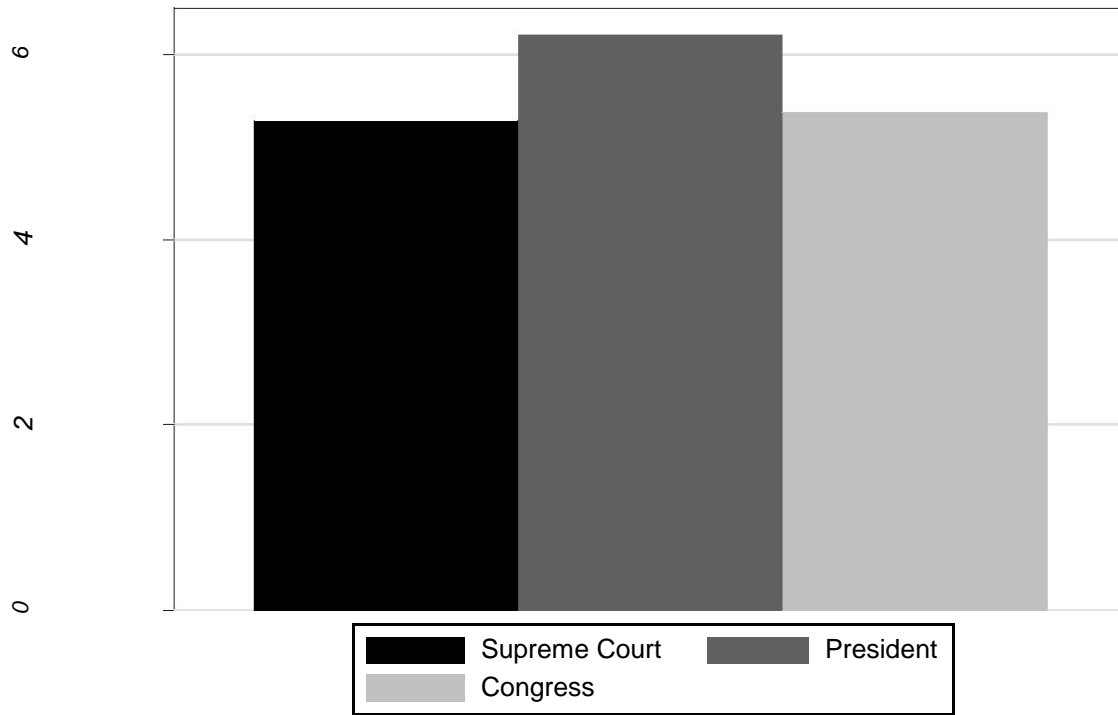


**Figure 3a: Short-Term Institutional Legitimacy (Mean)<sup>43</sup>**



<sup>43</sup> These results reflect the mean ranking of short-term legitimacy for each of the institutions. An additive index was created with the four shorter-term variables (trust, confidence, perception that the institution favors some groups over others, and perception that the institution gets too mixed up in politics). An increasing mean translates to increased legitimacy. Here, we see that when the index includes only short-term measures of legitimacy, the Supreme Court is most legitimacy, followed by the presidency, and then Congress.

**Figure 3b: Long-Term Institutional Legitimacy (Mean)<sup>44</sup>**



<sup>44</sup> These results reflect the mean legitimacy for each institution when the index is comprised of only the longer-term measures (do away with the institution, and limit two powers inherent in the institution). Here, we see that when we do this the President is the most legitimate institution, while the Supreme Court and Congress share nearly equal legitimacy. Figures 3a and 3b highlight the difference in our understanding of legitimacy when we measure it differently.



**Table 7: Mean Short- versus Long-Term Legitimacy, by Variables**<sup>45</sup>

	Supreme Court		Congress		Presidency	
	<i>Short Term</i>	<i>Long Term</i>	<i>Short Term</i>	<i>Long Term</i>	<i>Short Term</i>	<i>Long Term</i>
Trust	1.7648		1.0061		1.5636	
Confidence	1.8440		1.0000		1.5441	
Politics	1.5294		0.6428		1.4282	
Favors Groups	1.2085		0.5108		1.0078	
Do Away		2.0648		1.9401		2.3102
SC Limit Cong Appoint Pres Life Appoint		1.4267		1.7778		1.8094
SC Elect Cong Rules Pres Veto		1.7921		1.6444		2.0874
Average	1.5867	1.7612	0.7899	1.7874	1.3859	2.0690

<sup>45</sup> Table 7 presents the mean for each of the variables in the index. For each institution, the short-term index variables are in the left-hand column, while the long-term are in the right. Remember that, for each variable, there is a 4 point scale, and they are all coded, such that an increasing mean is a positive reflection of the institution.

**Table 8: Distribution of Legitimacy Measures, by Institution<sup>46</sup>**

	Low Legitimacy				High Legitimacy
Supreme Court – Short Term	6.07%	19.82%	44.60%	26.56%	2.95%
Supreme Court – Long Term	3.68%	16.56%	31.94%	32.39%	15.44%
Congress – Short Term	41.12%	34.56%	21.48%	2.67%	.17%
Congress – Long Term	4.32%	14.47%	29.88%	35.76%	15.58%
Presidency – Short Term	18.19%	19.53%	34.87%	22.16%	5.25%
Presidency – Long Term	1.57%	7.23%	22.64%	42.88%	25.68%

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<sup>46</sup> This table reflects percentage of respondents that express legitimacy (both short- and long-term) for each institution, broken into a five-point scale of increasing legitimacy. The results reveal that, for all three institutions, respondents express much greater institutional legitimacy when only the long-term measures are included in the index, than when just the short-term measures are included .

**Table 9a: Influences on Short Term Measures of Support, Supreme Court<sup>47</sup>**  
 \*p<.1; \*\*p<.05; \*\*\*p<.01

	Supreme Court			
	Trust	Party/Political Interest	Favors Groups	Confidence
Short Term Legitimacy	<b>0.1980***</b> ( <b>0.0098</b> )	<b>0.0578***</b> ( <b>0.0120</b> )	<b>0.1540***</b> ( <b>0.0108</b> )	<b>0.2037***</b> ( <b>0.0096</b> )
Long Term Legitimacy	<b>0.0110*</b> ( <b>0.0066</b> )	<b>0.0230***</b> ( <b>0.0081</b> )	<b>0.0123*</b> ( <b>0.0074</b> )	0.0033 (0.0064)
Female	-0.0016 (0.0262)	-0.0212 (0.0323)	0.0157 (0.0296)	<b>0.0756***</b> ( <b>0.0255</b> )
Black	0.0601 (0.0515)	<b>0.1270**</b> ( <b>0.0635</b> )	-0.0118 (0.0583)	-0.0524 (0.0502)
Asian	0.0831 (0.0529)	-0.0994 (0.0652)	-0.0280 (0.0598)	<b>0.1371***</b> ( <b>0.0515</b> )
Hispanic	0.0505 (0.0613)	-0.0475 (0.0756)	-0.0488 (0.0693)	0.0125 (0.0597)
Conservative	-0.0529 (0.0401)	<b>-0.1355***</b> ( <b>0.0494</b> )	0.0363 (0.0454)	0.0153 (0.0391)
Republican	0.0117 (0.0429)	0.0280 (0.0529)	0.0366 (0.0485)	-0.0354 (0.0418)
Ideological Distance	0.0117 (0.0121)	-0.0057 (0.0150)	<b>-0.0669***</b> ( <b>0.0136</b> )	<b>-0.0419***</b> ( <b>0.0118</b> )
Education (Increasing)	0.0008 (0.0083)	<b>0.0175*</b> ( <b>0.0103</b> )	-0.0146 (0.0094)	<b>0.0135*</b> ( <b>0.0081</b> )
Age (Increasing)	<b>0.0178**</b> ( <b>0.0086</b> )	<b>-0.0404***</b> ( <b>0.0107</b> )	0.0156 (0.0098)	0.0076 (0.0084)
Family Income (Increasing)	<b>0.0113***</b> ( <b>0.0041</b> )	<b>-0.0134***</b> ( <b>0.0051</b> )	0.0034 (0.0047)	<b>0.0075*</b> ( <b>0.0040</b> )
Institution Fulfills Role	<b>0.1912***</b> ( <b>0.0259</b> )	0.0501 (0.0324)	<b>0.1228***</b> ( <b>0.0295</b> )	<b>0.1067***</b> ( <b>0.0254</b> )
Institution Uses Fair Procedures	<b>0.1922***</b> ( <b>0.0245</b> )	<b>0.0861***</b> ( <b>0.0307</b> )	<b>0.0700**</b> ( <b>0.0282</b> )	<b>0.2041***</b> ( <b>0.0239</b> )
Institution Considers People	<b>0.0982***</b> ( <b>0.0179</b> )	<b>0.0394*</b> ( <b>0.0222</b> )	0.0145 (0.0203)	<b>0.0699***</b> ( <b>0.0174</b> )
Attention to News	-0.0020 (0.0067)	<b>-0.0157*</b> ( <b>0.0083</b> )	-0.0099 (0.0076)	0.0020 (0.0065)
N=	1638	1638	1638	1638
Adj/Pseudo R <sup>2</sup>	0.5645	0.2854	0.3348	0.5554

<sup>47</sup> Tables 9a, 9b, and 9c are OLS regression models, wherein, for each institution, the dependent variable is each of the short-term variables on its own. The results are mixed, but a general pattern emerges wherein short-term legitimacy impacts all of these variables for each of the institutions. Long-term legitimacy matters for some institutions, but not at all for Congress.

**Table 9b: Influences on Short Term Measures of Support, Congress**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	Congress			
	Trust	Party/Political Interest	Favors Groups	Confidence
Short Term Legitimacy	<b>0.1931***</b> ( <b>0.0111</b> )	<b>0.1664***</b> ( <b>0.0141</b> )	<b>0.0157***</b> ( <b>0.0104</b> )	<b>0.1929***</b> ( <b>0.0116</b> )
Long Term Legitimacy	0.0048 (0.0070)	-0.0026 (0.0088)	-0.0106 (0.0069)	0.0028 (0.0073)
Female	0.0179 (0.0292)	<b>-0.1160***</b> ( <b>0.0367</b> )	0.0121 (0.0287)	<b>0.1056***</b> ( <b>0.0303</b> )
Black	-0.0519 (0.0556)	0.0227 (0.0700)	<b>0.1106**</b> ( <b>0.0547</b> )	-0.0401 (0.0578)
Asian	0.0314 (0.0578)	0.0154 (0.0727)	0.0392 (0.0568)	-0.0469 (0.0600)
Hispanic	0.0687 (0.0676)	0.0198 (0.0851)	-0.0516 (0.0664)	-0.0780 (0.0702)
Conservative	0.0202 (0.0530)	0.0398 (0.0666)	<b>0.1408***</b> ( <b>0.0520</b> )	-0.0194 (0.0550)
Republican	-0.0196 (0.0525)	0.0066 (0.0660)	0.0429 (0.0516)	0.0732 (0.0545)
Ideological Distance	-0.0062 (0.0147)	0.0020 (0.0185)	-0.0082 (0.0144)	-0.0040 (0.0153)
Education (Increasing)	0.0001 (0.0092)	0.0090 (0.0115)	-0.0125 (0.0090)	-0.0049 (0.0095)
Age (Increasing)	-0.0120 (0.0096)	<b>0.0232*</b> ( <b>0.0121</b> )	0.0098 (0.0094)	-0.0052 (0.0100)
Family Income (Increasing)	-0.0027 (0.0046)	-0.0092 (0.0058)	-0.0016 (0.0045)	0.0047 (0.0048)
Institution Fulfills Role	<b>0.2267***</b> ( <b>0.0280</b> )	<b>-0.0598*</b> ( <b>0.0360</b> )	0.0040 (0.0279)	<b>0.1748***</b> ( <b>0.0292</b> )
Institution Uses Fair Procedures	<b>0.1883***</b> ( <b>0.0269</b> )	0.0252 (0.0346)	<b>0.0850***</b> ( <b>0.0267</b> )	<b>0.1684***</b> ( <b>0.0280</b> )
Institution Considers People	<b>0.0950***</b> ( <b>0.0241</b> )	<b>0.1061***</b> ( <b>0.0304</b> )	<b>0.0472**</b> ( <b>0.0238</b> )	<b>0.0995***</b> ( <b>0.0250</b> )
Attention to News	-0.0116 (0.0075)	<b>-0.0239**</b> ( <b>0.0095</b> )	-0.0064 (0.0074)	<b>-0.0198**</b> ( <b>0.0078</b> )
N=	1349	1349	1349	1349
Adj/Pseudo R <sup>2</sup>	0.5925	0.2476	0.3559	0.5530

**Table 9c: Influences on Short Term Measures of Support, Presidency**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	Presidency			
	Trust	Party/Political Interest	Favors Groups	Confidence
Short Term Legitimacy	<b>0.2500***</b> (0.0094)	<b>0.1716***</b> (0.0104)	<b>0.1416***</b> (0.0095)	<b>0.2461***</b> (0.0104)
Long Term Legitimacy	<b>0.0280***</b> (0.0071)	0.0131 (0.0083)	-0.0006 (0.0078)	0.0062 (0.0078)
Female	-0.0346 (0.0256)	<b>0.0756**</b> (0.0297)	0.0403 (0.0280)	0.0242 (0.0280)
Black	0.0096 (0.0504)	0.0585 (0.0585)	0.0875 (0.0551)	0.0648 (0.0551)
Asian	0.0465 (0.0529)	0.0765 (0.0614)	0.0492 (0.0579)	-0.0457 (0.0578)
Hispanic	0.0060 (0.0599)	<b>0.1232*</b> (0.0695)	-0.0011 (0.0655)	-0.0752 (0.0654)
Conservative	0.0158 (0.0450)	0.0042 (0.0522)	0.0081 (0.0492)	-0.0518 (0.0492)
Republican	<b>-0.1509***</b> (0.0434)	-0.0289 (0.0504)	0.0450 (0.0476)	-0.0744 (0.0475)
Ideological Distance	<b>-0.0576***</b> (0.0156)	-0.0259 (0.0182)	<b>-0.0470***</b> (0.0171)	-0.0246 (0.0171)
Education (Increasing)	<b>0.0261***</b> (0.0081)	-0.0142 (0.0094)	<b>-0.0301***</b> (0.0088)	0.0091 (0.0088)
Age (Increasing)	0.0110 (0.0085)	-0.0122 (0.0098)	0.0079 (0.0092)	-0.0061 (0.0092)
Family Income (Increasing)	0.0030 (0.0040)	-0.0050 (0.0047)	<b>-0.0088**</b> (0.0044)	<b>0.0080*</b> (0.0044)
Institution Fulfills Role	<b>0.0955***</b> (0.0264)	0.0309 (0.0308)	0.0450 (0.0290)	<b>0.1628***</b> (0.0287)
Institution Uses Fair Procedures	<b>0.1296***</b> (0.0253)	<b>0.0967***</b> (0.0295)	<b>0.1243***</b> (0.0277)	<b>0.1167***</b> (0.0277)
Institution Considers People	<b>0.1072***</b> (0.0227)	<b>0.1981***</b> (0.0261)	<b>0.0427*</b> (0.0250)	<b>0.0863***</b> (0.0248)
Attention to News	-0.0025 (0.0066)	-0.0078 (0.0076)	0.0070 (0.0072)	0.0040 (0.0072)
N=	1626	1626	1626	1626
Adj/Pseudo R <sup>2</sup>	0.7561	0.5865	0.4962	0.7087

**Table 10a: Long-Term Legitimacy, by Short-Term Variables<sup>48</sup>**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	Supreme Court	Congress	Presidency
Trust	<b>0.2122**</b> <b>(0.1060)</b>	0.0491 (0.1195)	<b>0.4036***</b> <b>(0.0991)</b>
Confidence	0.0349 (0.1083)	0.0022 (0.1158)	-0.0776 (0.0930)
Politics/Party Interest	<b>0.2144***</b> <b>(0.0767)</b>	0.0092 (0.0884)	<b>0.1367*</b> <b>(0.0763)</b>
Favors Groups	0.1277 (0.0836)	-0.1624 (0.1116)	-0.0113 (0.0813)
Female	-0.0047 (0.0990)	<b>-0.2127*</b> <b>(0.1144)</b>	-0.0048 (0.0896)
Black	-0.2982 (0.1944)	<b>-0.7552***</b> <b>(0.2164)</b>	-0.1217 (0.1760)
Asian	<b>-0.4304**</b> <b>(0.1993)</b>	<b>-0.5561</b> <b>(0.2250)</b>	<b>-0.7195***</b> <b>(0.1840)</b>
Hispanic	-0.0592 (0.2310)	-0.3756 (0.2639)	-0.2599 (0.2091)
Conservative	<b>0.3430**</b> <b>(0.1512)</b>	0.3337 (0.2068)	-0.1296 (0.1571)
Republican	-0.2094 (0.1616)	0.1848 (0.2049)	0.1252 (0.1521)
Ideological Distance	<b>0.1084**</b> <b>(0.0458)</b>	0.0054 (0.0574)	<b>0.1846***</b> <b>(0.0545)</b>
Education (Increasing)	<b>0.1523***</b> <b>(0.0312)</b>	<b>0.1401***</b> <b>(0.0356)</b>	<b>0.0775***</b> <b>(0.0283)</b>
Age (Increasing)	<b>-0.0644**</b> <b>(0.0327)</b>	0.0290 (0.0375)	-0.0108 (0.0295)
Family Income (Increasing)	-0.0094 (0.0156)	0.0057 (0.0179)	-0.0065 (0.0141)
Institution Fulfills Role	<b>0.4128***</b> <b>(0.0988)</b>	0.1666 (0.1121)	<b>0.4394***</b> <b>(0.0921)</b>
Institution Uses Fair Procedures	<b>0.2496***</b> <b>(0.0943)</b>	<b>0.2228**</b> <b>(0.1070)</b>	0.0498 (0.0890)
Institution Considers People	<b>-0.2467***</b> <b>(0.0677)</b>	<b>0.2462***</b> <b>(0.0944)</b>	<b>0.1403*</b> <b>(0.0800)</b>
Attention to News	<b>0.1560***</b> <b>(0.0250)</b>	<b>0.1419***</b> <b>(0.2203)</b>	<b>0.1400***</b> <b>(0.0227)</b>
N=	1638	1349	1626
Adj/Pseudo R <sup>2</sup>	0.1414	0.0867	0.1686

<sup>48</sup> Here, long-term legitimacy (the dependent variables) is modeled with each of the short-term variables utilized as independent variables. Confidence and perception that the institution favors some groups are not significant for any of the institutions, while trust and perception that the institution puts politics/party first matter for the Supreme Court and the presidency.

**Table 10b: Short-Term Legitimacy, by Long-Term Variables<sup>49</sup>**  
 \*p<.1; \*\*p<.05; \*\*\*p<.01

	Supreme Court	Congress	Presidency
Do Away	<b>0.2149***</b> (0.0539)	<b>-0.1245**</b> (0.0505)	-0.0026 (0.0574)
SC Limit Cong Appoint Pres Life Appoint	<b>0.1468***</b> (0.0500)	0.0206 (0.0680)	<b>0.2280***</b> (0.0601)
SC Elect Cong Rules Pres Veto	0.0065 (0.0506)	0.0458 (0.0631)	0.0886 (0.0685)
Female	<b>0.1469*</b> (0.0838)	0.0141 (0.0911)	<b>0.2672***</b> (0.0880)
Black	0.2581 (0.1644)	0.1125 (0.1735)	<b>0.5458***</b> (0.1732)
Asian	0.2048 (0.1690)	0.0650 (0.1797)	<b>0.3036*</b> (0.1823)
Hispanic	-0.0718 (0.1956)	-0.0710 (0.2102)	0.1305 (0.2063)
Conservative	<b>-0.2927**</b> (0.1278)	<b>0.3655**</b> (0.1646)	-0.0516 (0.1554)
Republican	0.0744 (0.1371)	0.2156 (0.1630)	<b>-0.4972***</b> (0.1492)
Ideological Distance	<b>-0.2974***</b> (0.0382)	-0.0351 (0.0458)	<b>0.3876***</b> (0.0531)
Education (Increasing)	0.0351 (0.0267)	-0.0103 (0.0287)	-0.0261 (0.0279)
Age (Increasing)	-0.0043 (0.0276)	0.0434 (0.0300)	0.0094 (0.0293)
Family Income (Increasing)	0.0181 (0.0131)	-0.0188 (0.0142)	-0.0080 (0.0139)
Institution Fulfills Role	<b>0.9892***</b> (0.0808)	<b>0.7234***</b> (0.0860)	<b>0.8365***</b> (0.0891)
Institution Uses Fair Procedures	<b>1.1673***</b> (0.0742)	<b>0.9741***</b> (0.0805)	<b>1.1777***</b> (0.0828)
Institution Considers People	<b>0.4698***</b> (0.0562)	<b>0.7357***</b> (0.0728)	<b>1.0913***</b> (0.0737)
Attention to News	<b>-0.0565***</b> (0.0214)	<b>-0.1249***</b> (0.0232)	0.0032 (0.0227)
N=	1638	1349	1626
Adj/Pseudo R <sup>2</sup>	0.5200	0.5406	0.7189

<sup>49</sup> Here, short-term legitimacy (the dependent variables) is modeled with each of the long-term variables utilized as independent variables. The results are mixed (see the text for more discussion), but we do see that some long-term variables do influence short-term legitimacy.

**Table 11: Short- vs. Long-Term Legitimacy<sup>50</sup>**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	Supreme Court		Congress		Presidency	
	Short Term Legitimacy	Long Term Legitimacy	Short Term Legitimacy	Long Term Legitimacy	Short Term Legitimacy	Long Term Legitimacy
Long-Term Legitimacy	<b>0.1071***</b> (0.0209)		-0.0124 (0.0219)		<b>0.1145***</b> (0.0244)	
Short-Term Legitimacy		<b>0.1488***</b> (0.0290)		-0.0194 (0.0343)		<b>0.1177***</b> (0.0251)
Female	<b>0.1434*</b> (0.0836)	-0.0138 (0.0987)	0.0360 (0.0908)	<b>-0.2145*</b> (0.1136)	<b>0.2755***</b> (0.0881)	-0.0183 (0.0896)
Black	0.2685 (0.1645)	-0.2836 (0.1940)	0.0955 (0.1731)	<b>-0.7733***</b> (0.2159)	<b>0.5608***</b> (0.1734)	-0.1361 (0.1764)
Asian	0.1848 (0.1689)	<b>-0.4451**</b> (0.1988)	0.0844 (0.1798)	<b>-0.5605**</b> (0.2248)	<b>0.3281*</b> (0.1824)	<b>-0.7086***</b> (0.1843)
Hispanic	-0.0778 (0.1959)	-0.0594 (0.2309)	-0.0882 (0.2104)	-0.3668 (0.2635)	0.1464 (0.2065)	-0.2452 (0.2094)
Conservative	<b>-0.2958**</b> (0.1279)	<b>0.3315**</b> (0.1508)	<b>0.3876**</b> (0.1645)	0.3186 (0.2064)	-0.0548 (0.1552)	-0.1198 (0.1574)
Republican	0.0916 (0.1371)	-0.2050 (0.1615)	0.2166 (0.1632)	0.1802 (0.2047)	<b>-0.4989***</b> (0.1494)	0.0944 (0.1520)
Ideological Distance	<b>-0.3034***</b> (0.0380)	<b>0.1127**</b> (0.0456)	-0.0344 (0.0457)	0.0061 (0.0573)	<b>-0.3885***</b> (0.0531)	<b>0.1789***</b> (0.0546)
Education (Increasing)	0.0364 (0.0266)	<b>0.1524***</b> (0.0311)	-0.0178 (0.0285)	<b>0.1420***</b> (0.0355)	-0.0309 (0.0279)	<b>0.0856***</b> (0.0282)
Age (Increasing)	-0.0006 (0.0276)	<b>-0.0669**</b> (0.0325)	0.0345 (0.0298)	0.0276 (0.0374)	0.0011 (0.0292)	-0.0084 (0.0296)
Family Income (Increasing)	0.0180 (0.0132)	-0.0104 (0.0155)	-0.0187 (0.0143)	0.0056 (0.0179)	-0.0094 (0.0139)	-0.0063 (0.0141)
Institution Fulfills Role	<b>1.0054***</b> (0.0799)	<b>0.4113***</b> (0.0982)	<b>0.7099***</b> (0.0860)	<b>0.1814*</b> (0.1104)	<b>0.8213***</b> (0.0891)	<b>0.4389***</b> (0.0921)
Institution Uses Fair Procedures	<b>1.1749***</b> (0.0740)	<b>0.2413***</b> (0.0936)	<b>0.9706***</b> (0.0806)	<b>0.2275**</b> (0.1062)	<b>1.1699***</b> (0.0829)	0.0561 (0.0891)
Institution Considers People	<b>0.4716***</b> (0.0562)	<b>-0.2476***</b> (0.0674)	<b>0.7261***</b> (0.0728)	<b>0.2509***</b> (0.0943)	<b>1.0880***</b> (0.0739)	<b>0.1572**</b> (0.0797)
Attention to News	<b>-0.0559***</b> (0.0214)	<b>0.1553***</b> (0.0249)	<b>-0.1288***</b> (0.0232)	<b>0.1412***</b> (0.0291)	0.0023 (0.0227)	<b>0.1388***</b> (0.0227)
N=	1638	1638	1349	1349	1626	1626
Adj/Pseudo R <sup>2</sup>	0.5186	0.1421	0.5391	0.0873	0.7179	0.1648

<sup>50</sup> Table 11 presents the results of modeling the individual short- and long-term legitimacy indices as dependent variables for each of the institutions. Primarily, we see that both short- and long-term legitimacy matter to each other for both the Supreme Court and the presidency, but not Congress. We also see that structural variables matter to both short- and long-term legitimacy, although with a couple of exceptions. Additionally, demographic information reveals some intriguing findings. For instance, African Americans express significantly more short-term legitimacy in the presidency (the first African American president), while Republicans express less short-term legitimacy in the sitting Democratic president. Also, Asians have significantly less long-term legitimacy in all institutions. I do not have a developed explanation for this finding.



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## CHAPTER IV

### INFLUENCES ON INSTITUTIONAL PREFERENCE

In the last chapter, I deconstructed the traditional institutional legitimacy index (see Chapter II for an explanation of the index), arguing that 1) the index, as traditionally comprised, has some weaknesses, and 2) that a better index can be utilized to capture enduring support for institutions. Further, for the first time, I applied this index, and analysis, to Congress and the presidency, allowing for comparative analysis that has, heretofore, been lacking in the literature. This thorough understanding of legitimacy across institutions, including the factors that drive said legitimacy, brings us one step closer to understanding a key variable in policy acceptance, which is the ultimate goal of this dissertation. In this chapter, another large step is taken in fully understanding the role of institutions in policy acceptance by examining respondent notions of the institution best-suited to make policy in three salient issue areas: online sales taxation, same-sex marriage, and the operation of Guantanamo Bay. The question being examined is which institution – the Supreme Court, Congress, or the presidency – is *best-suited* to make decisions in each of these areas and what drives respondents to rank one institution higher than another? While respondents were asked to rank each of the institution in order of their suitability to handle each issue (see Chapter II for a thorough discussion of these questions), the responses are conceptualized as respondent preference of institution to handle issues.

Relying on data gathered from the nationally sampled survey, I attempt to understand what drives respondent opinion on the fitness of institutions to make policy in each of the aforementioned policy areas. Data were collected on respondent levels of support for the policies, as well as their perception about each institution's authority to make policies in each of the three issue areas. Institutional preference is distinct from authority, in that the latter captures

the idea that institutions may have the authority to make policy in certain areas, while the former captures the idea that, while each institution *can* make policy in each area, respondents may have preferences about which institution(s) is the best institution to make the policy. Here, I am interested in how respondents rank institutions to handle certain issues and, specifically, what predicts that ranking, that preference.

I suggest, for the first time in the literature, that respondents might have preferences over the institution that should be entrusted with making policy in a given issue area, and posit a theory for what might drive those preferences. Some issues may be deemed to be “legislative” or “judicial” or “executive,” and that choice over best-suited institution could plausibly affect the evaluation of the policy emanating from an institution, and hence, acceptance of, and compliance with, the policy, our ultimate interest. Chapter II outlined how institutional role influences how the American public perceives each branch of American government, with Congress expected to handle monetary policy, the President assigned foreign policy, and the Supreme Court expected to interpret the Constitution and protect the rights of citizens. Some roles are codified in the Constitution, while others have developed over time. Further, institutional characteristics may drive public perception about the appropriate institution to handle certain issues. As was discussed in Chapter III, Congress and the presidency are designed to be political institutions, expected to consider public opinion when making policy, whereas the Supreme Court is insulated from public opinion and may be expected to actively avoid consideration of it when making decisions. These expectations may drive how respondents determine which branch is most appropriate to make policy in certain areas. Finally, intertwined with these institutional characteristics are issue-level characteristics that may influence perception of institutional appropriateness to make policy on those issues. For instance, same-sex marriage may be

considered a “rights” issue, leading respondents to then assign that issue to the institution that is designed to handle “rights” issues – the Supreme Court. Likewise, issues related to money may be assigned to Congress, given its constitutionally ordained “power of the purse.” And, the President may be expected to handle the operation of the Guantanamo Bay Detention Facility, specifically because the office is assigned foreign policy responsibility. I expect respondents to rank highly, or prefer, Congress to handle online sales taxation, the presidency to handle the issue of Guantanamo Bay, and the Supreme Court to handle same-sex marriage.

While much literature has considered whether one institution over the others is better able to legitimate public policy, as cited in Chapter II, none has considered whether that ability has anything to do with the perceptions respondents have about the authority of the various institutions to make policy in a given arena. Authority is different from preference to make policy in an issue area. While an individual may feel that an institution has authority to make policy on an issue, they may not necessarily prefer that institution to make policy on that issue. To parse the difference here, though, respondents were asked, of each institution on each issue, to what degree each institution has authority to make decisions in that issue area. They were asked to choose from four options, capturing the intensity of their agreement that each institution had authority. On the issue of same-sex marriage, more respondents agreed that the Supreme Court has authority to make policy on the issue, than does Congress or the presidency.<sup>51</sup> Congress is viewed by the most respondents as authoritative on the issue of online sales

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<sup>51</sup> 73.74% of respondents said the Supreme Court had authority to make policy in this area, as opposed to 55.33% for Congress and 35.83% for the presidency.

taxation,<sup>52</sup> and the President is viewed as the most authoritative on the issue of Guantanamo Bay (just above the Supreme Court).<sup>53</sup>

[Insert Figures 5a, 5b, and 5c Here]<sup>54</sup>

Respondents were also asked to rank institutions from the one that is best-suited to make federal policy requiring same sex marriage benefits, detention of combatants at the Guantanamo Bay facility, and tax regulation of online sales, to the one that is least-suited to make policy on these same issues, giving them the choice of the President, Congress, or the Supreme Court. This chapter considers their responses and attempts to understand what drives them. These rankings are conceptualized as respondent institutional preference to handle each issue.

It appears that people are, generally, perceive the Court to be the best-suited policymaker on the issues of same-sex marriage and Guantanamo Bay, than they are of the other two institutions, while Congress is ranked first to handle the issue of online sales taxation.<sup>55</sup> On the issue of same-sex marriage (67.30%), and on the issue of Guantanamo Bay (46.70%), respondents ranked the Supreme Court first. On the issue of online sales taxation, 54.69% ranked Congress first. On the issues of same-sex marriage and online taxation, the President was ranked first by only 12.13% and 11.01% of respondents, respectively. And, on the issue of Guantanamo Bay, Congress was ranked last to make policy in this area, with only 19.37% of respondents ranking the institution first. Clearly, people are making distinctions among the

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<sup>52</sup>81.55% of respondents said Congress has authority to make policy in this area, as opposed to 56.20% for the Supreme Court and 30.80% for the presidency.

<sup>53</sup>77.10% of respondents said the presidency has authority to make policy in this area, as opposed to 74.56% for the Supreme Court and 70.16% for Congress.

<sup>54</sup>On the issue of same-sex marriage, the mean authority positions are: Supreme Court – 1.87; Congress – 1.51; President – 1.20. On the issue of online sales taxation, the mean positions are: Congress – 1.94; Supreme Court – 1.54; President – 1.13. On the issue of Guantanamo Bay, the mean positions are: President – 1.91; Supreme Court – 1.90; Congress – 1.76.

<sup>55</sup>On the issue of same-sex marriage, the percentage of first rankings are: Supreme Court – 67.30%; Congress – 20.57%; President – 12.13%. On the issue of online sales taxation, the percentages are: Congress – 54.69%; Supreme Court – 34.30%; President – 11.01%. On the issue of Guantanamo Bay, the percentages are: Supreme Court – 46.70%; President – 33.93%; Congress – 19.37%.

branches as to their aptitude for policy making in this area, even though their distinctions are not exactly as expected.

[Insert Figure 6]

Further examination reveals that, when certain demographics (whites, African Americans, Republicans, Democrats, women, men, liberals, and conservatives) are examined separately, all survey respondents do indeed prefer Congress to handle online taxation and the Supreme Court to handle same-sex marriage (see Figures 7a and 7b). Interestingly, however, the Supreme Court is preferred on the issue of Guantanamo Bay (see Figure 7c), despite respondents also holding that the President is the most authoritative policymaker in this area. This may be due to some conflict between the perception that the Guantanamo Bay issue is a foreign policy issue and the perception that it is a criminal justice or rights issue. As was discussed earlier, foreign policy issues might be assigned to the presidency, but if this is, instead, perceived as a criminal justice issue that may lead respondents to believe it should be assigned to the Court. Here, all demographics, except African Americans, hold this preference.

[Insert Figures 7a, 7b, and 7c Here]

These findings may be due to respondent perception of the three issues – that they are primarily social, moral, economic, political, or rights-based (see Chapter II for a discussion about these choices). In the case of Guantanamo Bay, Figure 7 shows that respondents deem it, like same-sex marriage, to be primarily about rights. As such, the Supreme Court is seen as best-suited to handle these issues, as courts are perceived as protectors of rights (see, i.e., Gibson and Caldeira 2009; Rosenberg 1991; Scheingold 2004; McClain and Stewart 2006).<sup>56</sup> Nonetheless,

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<sup>56</sup> This is not true across demographics, however. African Americans rank the President first to handle the issue of Guantanamo Bay. The fact that African Americans narrowly rank the President higher than the Supreme Court on this issue may suggest a strong specific loyalty to the sitting President over the current Supreme Court, although no further data is available to clarify this finding.



these findings bear out the theoretical argument that authority and preference are distinctly different concepts.

[Insert Figure 7 Here]

And, these preferences differ significantly from one another. Employing Spearman's Rho on the two institutions that are ranked the highest for each issue – Congress and the Supreme Court for both same-sex marriage and online taxation; President and the Supreme Court for Guantanamo Bay – versus those that are ranked the lowest on each issue, we see that, the mean rankings for each institution are significantly different from each other.<sup>57</sup> In fact, we also see that the mean rankings between the two highest ranked institutions on each issue are also all significantly different from each other.<sup>58</sup> The natural next question, then, becomes, what drives these preferences? I turn, now, to an examination of this.

#### Descriptives: Institutional Reference

First, I consider the likelihood that a respondent will prefer one of the three institutions as best-suited to make policy in each of the issue areas. Multinomial logistic regression allows a differential comparison across institutions on each of the issues, providing some analysis about the variables that drive respondents to choose one institution over another to handle policymaking.

The primary argument is that the likelihood that a respondent will prefer one institution over the other will first depend on institutional legitimacy (see Chapter II for a discussion about this) and authority imbued in that institution to make policy in a certain issue area (see Chapter II). I expect that both institutional legitimacy and institutional authority to handle an issue will drive preferences of that institution to make policy in that issue area. As discussed in Chapter II,

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<sup>57</sup> Same-sex marriage: -1.4851\*\*\*; online sales taxation: -1.1305\*\*\*; Guantanamo Bay: -0.4125\*\*\*.

<sup>58</sup> Same-sex marriage: -0.4775\*\*\*; online sales taxation: -0.6497\*\*\*; Guantanamo Bay: -0.6424\*\*\*.

authority is linked with acceptance and, as such, it makes sense that it should also drive preferences of institutions to handle certain issues. The dependent variable for the models is ranking of each institution that is best-suited (so, a first ranking) to make policy on each of the issues. The primary independent variables included in the models are institutional legitimacy (long- and short-term)<sup>59</sup> and whether each institution has authority to handle the issue.

Therefore, the argument is that institutional legitimacy (both short- and long-term) and authority to handle an issue drive ranking of each of the institutions, as to their suitability, relative to the other institutions, to make policy in each of the policy areas, such that as an increase in institutional legitimacy and authority to handle an issue increases, so too will ranking of that institution's suitability, over the other institutions, to handle the issue.

When asked the degree to which each institution has authority to handle the issue of same-sex marriage, respondents listed the Supreme Court first (see Figure 4a). Also, remember that respondents overwhelmingly preferred the Supreme Court to handle the issue (see Figure 6). As such, I expect that perception that the Supreme Court has authority to make policy on the issue of same-sex marriage to significantly matter to preference, such that as perceived authority for the Court on this issue increases, so does the likelihood that it will be ranked first, over the other branches, to handle the issue.

On the issue of online sales taxation, respondents preferred Congress to make policy in this area (see Figure 6), and also granted it more authority than the presidency or Supreme Court to handle the issue (see Figure 4b). This leads me to expect that, on this issue, congressional authority will drive ranking more so than presidential and judicial authority.

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<sup>59</sup> Note that legitimacy is included here in models of rank, while it will also be included in models of acceptance, wherein rank will also be utilized as an independent variable. This may seem to pose a methodological challenge, but I will argue in the next chapter that rank may be acting as an intervening variable between legitimacy and acceptance. In that case, legitimacy and rank may influence each other, while still having an independent impact on policy acceptance.

Finally, on the issue of Guantanamo Bay, descriptive findings are mixed. When asked which institution is best-suited to make policy on the issue, respondents chose the Supreme Court by a wide margin (see Figure 6); however, when asked the degree to which institution has authority to make decisions in this area, more respondents narrowly imbued the presidency with this authority, over the percentage that chose the Court (see Figure 4c). As such, I expect that congressional authority will drive ranking on this issue less so than presidential and Court authority.

Many of the same controls and demographic variables that were utilized in the legitimacy models in the previous chapter are also included in the models here for, essentially, the same reasons.

### **MULTINOMIAL LOGISTIC REGRESSION**

In the first analysis, I use whether or not each institution is ranked first as my dependent variables, and so I employ a multinomial logit, the results of which are in Tables 13-15. The base outcome for each model is the institution that I expect to be ranked highly to make policy in each area (for same-sex marriage, the Supreme Court; for online sales taxation, Congress; for Guantanamo Bay, the President). So, to explain what drives preference of an institution to make policy on the issue of same-sex marriage, the results of that model predict the likelihood that a respondent will rank the President or Congress first, as opposed to the Supreme Court. To explain what drives preference of an institution to make policy on the issue of online sales taxation, the results of that model predict the likelihood that a respondent will rank the President or the Supreme Court first, as opposed to Congress. And, to explain what drives preference of an institution to make policy on the issue of Guantanamo Bay, the results of that model predict the

likelihood that a respondent will rank Congress or the Supreme Court first, as opposed to the President. I discuss expectations and findings by issue.

### *Same-Sex Marriage*

As the belief that the Supreme Court has the authority to make policy on the issue of same-sex marriage increases, the likelihood that a respondent will rank the presidency or Congress first as compared with the Supreme Court decreases. This comports with my expectation. It stands to reason that as authority for an institution in one area increases, presidency for that institution to handle the issue over the other institution would also increase. Additionally, as the belief that Congress has the authority to make policy on the issue increases, the likelihood that the respondent will rank the presidency first also increases. Additionally, as short-term legitimacy in the Supreme Court increases, the likelihood that a respondent will rank the presidency or Congress first compared with the Supreme Court decreases. This stands to reason. Interestingly, though, as short-term legitimacy in Congress increases, so too does the likelihood that respondents will rank the presidency and Congress first over the Supreme Court to make policy on this issue. While the finding related to Congress makes sense, it is less understandable why respondents would also rank the presidency over the Supreme Court here. Perhaps, Congress and the presidency, being more political institutions, are linked as such.

Specific to ranking the presidency first, long-term congressional legitimacy matters, such that as long-term legitimacy in Congress increases, so does the likelihood that a respondent will rank the presidency over the Supreme Court to make policy on the issue of same-sex marriage. And, as congressional authority to make policy on the issue of same-sex marriage increases, the likelihood that a respondent will rank the presidency first, over the Supreme Court, also increases. These results may be due to the fact that Congress and the presidency are perceived as

making decisions in similar ways, with consideration for public opinion, whereas, as mentioned, the Court is expected to engage in decisionmaking that is removed from the political process. In this context, then, perhaps respondents are more likely to associate the decisionmaking processes of Congress and the presidency similarly. Therefore, these preferences may be linked on this issue.

Specific to ranking Congress first, short-term presidential legitimacy matters, such that as short-term legitimacy in the presidency increases, so does the likelihood that a respondent will rank Congress over the Supreme Court to make policy in this issue area. And, as the belief that the President has the authority to make policy on this issue increases, the likelihood that a respondent will rank Congress first as compared with the Supreme Court also increases. As discussed earlier, this may be due to the linking of the presidency and Congress to similar decisionmaking environments.

The legitimacy findings deserve some further discussion. Long-term and short-term legitimacy seem to behave in different ways. For instance, very rarely does long-term legitimacy influence ranking (except for those few circumstances mentioned above). On the other hand, short-term legitimacy matters to ranking in some way for all institutions (with the exception of short-term presidential legitimacy on presidential ranking). This comports with the findings in Chapter III, that short-term measures of legitimacy operate differently, and influence different things, than do long-term measures of legitimacy. Here, it seems that short-term legitimacy measures drive preference (the perception of which institution is best-suited to make policy on same-sex marriage) more so than do long-term measures. This suggests that the inhabitants of an institution and/or current perceptions of how the institution is behaving, or perceived to be acting, where respondents assign issues for policymaking.

As it pertains to demographic variables, other interesting findings emerge. African Americans are more likely to rank Congress first, as compared with the Supreme Court on the issue of same-sex marriage. Women are less likely to rank the presidency first, as compared with the Supreme Court, to make policy on this issue. These findings may be due to short-term evaluations of the institution. Increasing attention to news leads to a decrease in ranking Congress over the Supreme Court first on this issue. Finally, as education increases, the likelihood that the respondent will rank Congress first as compared with the Supreme Court decreases. These last two variables may each be speaking to respondent knowledge, albeit in different ways, and suggest that as knowledge increases, respondents are more likely to rank the Supreme Court over Congress to handle the issue of same-sex marriage.

[Insert Table 13 Here]

### ***Online Sales Taxation***

On the issue of online sales taxation, for both the presidency and the Supreme Court, as congressional authority increases, the likelihood of ranking the presidency or the Supreme Court over Congress to make policy on the issue decreases. This is to be expected. And, as long-term legitimacy in the Supreme Court increases, the likelihood that a respondent will rank the presidency over Congress on this issue decreases, but the likelihood that a respondent will rank the Supreme Court over Congress increases.

Specific to ranking the presidency first on this issue, presidential authority matters, such that as presidential authority to make policy on the issue of online sales taxation increases, so too does the likelihood of ranking the presidency first, as compared to Congress. And, specific to ranking the Supreme Court first, Supreme Court authority matters, as expected, such that as the

Court's authority increases in this issue are, so does the likelihood of ranking it over Congress to make policy in this area. These findings are expected and understandable.

As it pertains to demographics, African Americans are more likely to rank the President first versus Congress on this issue. Again, this may be reflective of a short-term response to the inhabitants of the institution. Remember that, at the time of the survey, the President, a Democrat, was the first African American President. Increasing education leads to a lower likelihood of ranking the Supreme Court over Congress to handle the issue of online sales taxation.

[Insert Table 14 Here]

### ***Guantanamo Bay***

On the issue of Guantanamo Bay and whether or not the facility should continue to detain enemy combatants, as presidential authority to make policy in this area increases, high ranking to make policy in the area for both Congress and the Supreme Court decreases. This is an expected finding, and is in keeping with the ranking highlighted in Figure 2, with the Supreme Court being ranked first to handle the issue. When it comes to institutional legitimacy, two interesting findings emerge. As short-term legitimacy in the presidency increases, the likelihood of ranking Congress or the Supreme Court first over the presidency decreases. This is expected, but it is especially interesting when compared to the fact that long-term presidential legitimacy does not influence preference here at all. Long-term congressional legitimacy, on the other hand does. As long-term legitimacy in Congress increases, the likelihood of ranking both Congress and the Supreme Court first over the presidency also increases. Interestingly, on the issue of Guantanamo Bay, short-term legitimacy in Congress does not influence preference.

Specific to ranking Congress first on the issue, congressional authority matters as we might expect. As congressional authority increases, the likelihood of ranking the Congress first to make policy in the area of Guantanamo Bay over the President increases. And, as long-term legitimacy in the Supreme Court increases, the likelihood that a respondent will rank Congress first over the presidency decreases. This comports with the finding above that long-term legitimacy in Congress leads to an increased likelihood of a first ranking for Congress and the Supreme Court over the presidency. In some way, Congress and the Supreme Court seem to be linked on this issue. It may be that when respondents think about this issue, they also believe that it should be approached from a deliberative perspective, in which case, Congress and the Supreme Court would seem to embrace that concept more obviously than does the presidency.

Specific to ranking the Supreme Court first on this issue, presidential authority influences ranking. As the belief that President has authority to make policy in this issue area increases, the likelihood that a respondent will rank the Supreme Court first as compared with the President decreases. As the narrative about authority has unfolded, it is clear that this finding is to be expected.

Again, it is important to note the differences across short- and long-term legitimacy here. The story on this issue of Guantanamo Bay, as it relates to legitimacy, is a bit different than on the other issues (where long-term legitimacy hardly mattered at all for same-sex marriage and online sales taxation policymaking). Here, short-term presidential legitimacy matters to preference, but so does long-term congressional legitimacy. This may suggest that respondents are thinking about the *current* president when determining preferences on this issue (short-term evaluation), whereas they are thinking about the *institution* of Congress (long-term evaluation). In essence, respondents may sometimes, and seemingly on this issue, evaluate appropriateness to



handle issues differentially across institutions. Additionally, it may also be that evaluating long-term institutional legitimacy in the presidency poses a larger challenge for respondents than it does for the other institutions, given that the executive office is so greatly associated with the current officeholder.

Finally, when it comes to demographic variables, some variables matter. Increasing education increases the likelihood that a respondent will rank Congress first over the presidency. Age and attention to news matter to ranking the Supreme Court first, as compared with the presidency. As age increases, the likelihood of ranking the Supreme Court first, as compared with the presidency, decreases. And, as respondent attention to news increases, so too does the likelihood of ranking the Supreme Court first, as compared with the President, to make policy on the issue of Guantanamo Bay.

[Insert Table 15 Here]

### **RANK-ORDERED LOGISTIC REGRESSION**

But, considering which institution is ranked first ignores the fact that any given respondent is also ranking the other two institutions, and that information is lost when we focus only on the first-ranked institution. Hence, we need a method that allows use of all available information in the respondent rank ordering of the three institutions. I utilize a rank-ordered logistic regression model (Beggs, Cardell, and Hausman 1981), which necessitates “flipping” the data such that, for each respondent, there are three observations – one for each institution. This method allows for comparison between rankings as they relate to each other. So, it models the likelihood of a high ranking, relative to lower rankings. Here, I am not interested in what drives the rankings specific to each institution, but rather what drives rankings, generally – what drives preferences. Instead of comparing institutions, I am interested in comparing levels of rank. As

such, the dependent variable is an index of ranking for all institutions, coded such that the rank is flipped onto an increasing scale (so a ranking of 1 is coded as 3). A higher institutional rank translates to a more preferred institution to handle issues. Given the methodological challenges of including certain demographic variables in a rank-ordered logistic regression model (owing to their lack of variance by institutional rank), only the independent variables of interest – institutional legitimacy (both short- and long-term) and institutional authority (see Tables 2-4) - are included in this model. I expect that they will significantly drive institutional rankings.

The results of the analysis are shown in Table 16. For all three issues – same-sex marriage, online sales taxation, and Guantanamo Bay – rankings assigned to the institution are driven by institutional authority, as expected. Remember, authority differs from preference, in that respondents may feel that more than one institution has the authority to make policy in a certain area, but hold a preferences over which institution is more, or less, suited to make policy in that area. As shown in the table, though, they are related. Higher levels of ascribed authority to make policy in a given area predict a higher ranked institution.

Legitimacy influences preference a bit differently across issues, though. On the issue of same-sex marriage, only, does both short- and long-term legitimacy driving increasing ranking. But, it does so in opposite ways. Increasing short-term legitimacy in an institution drives increasing ranking, but increasing long-term legitimacy drives decreasing ranking. So, on the issue of same-sex marriage, short-term legitimacy clearly influences preference, which supports earlier findings, but the fact that long-term legitimacy significantly *decreases* ranking is fascinating. This flies directly in the face of our established understanding that long-term evaluations of an institution drive our feelings about policy emanating from those institutions. While this is not an examination of policy acceptance (which occurs in the next chapter), this

finding suggests that, perhaps, our current understanding of how legitimacy influences policymaking is wrong.

On the issue of Guantanamo Bay, short-term legitimacy drives preference, while long-term legitimacy does not significantly impact preference at all. And, on the issue of online sales taxation, short-term legitimacy does not significantly predict preference, but, as with same-sex marriage, increasing long-term institutional legitimacy significantly decreases ranking of an institution to make policy on the issue. Again, this is fascinating and the implications of these findings on policy acceptance will be examined in the next chapter.

[Insert Table 16 Here]

## **LOGISTIC REGRESSION**

Given that the rank-ordered logistic regression did not capture the influence of other control variables on preference, the results of logistic regression are presented here. On each issue and for each institution, two logistic regression models were run, one each with the dummied dependent variables of first rank and third rank. The control variables (outlined in Chapter II) are included in all models. Table 17a reports results for the Supreme Court, Table 17b for Congress, and Table 17c for the presidency.

First, before examining each institution in detail, it is important to note that for all three institutions, authority to make policy in each of the three issue areas significantly drives preference. This is the only variable in all of the models to do so. Increasing authority to decide drives an increased likelihood of a first rank, while increasing authority drives a decreased likelihood of a third rank. As expected, authority is very clearly driving institutional preference.

*Supreme Court*

On all three issues, long-term legitimacy drives rank in interesting ways. Increasing long-term legitimacy drives a decreased likelihood of a third ranking for same-sex marriage, but an increased likelihood of a third ranking for online sales taxation and Guantanamo Bay. It also drives a decreased likelihood of a first ranking for online sales taxation. Again, while this is not universal, it does paint the picture that, rather than even not influencing ranking at all, long-term legitimacy (here, for the Supreme Court) is actually driving lower rankings. Short-term legitimacy, on the other hand significantly drives first rankings on all three issues for the Supreme Court. And, it negatively drives a third rank on the issue of same-sex marriage, such that as short-term legitimacy increases, the likelihood of ranking the Supreme Court third to handle the issue decreases. Taken together, these findings point to the fact that short-term legitimacy in the Supreme Court is driving high rankings, while long-term legitimacy in the institution is actually driving low rankings.

Demographically, a few other interesting findings emerge. African Americans are much more likely to preference the Supreme Court differentially than others to make policy on the issues of same-sex marriage and online sales taxation, but not for Guantanamo Bay. African Americans are much less likely to rank the Supreme Court first, and more likely to rank it third, to make policy on the issues of same-sex marriage and online sales taxation. Hispanics are much more likely to rank the Supreme Court third on the issue of online sales taxation. Republicans are more likely to rank the Supreme Court first on the issue of online sales taxation.

For online sales taxation only, increasing ideological distance negatively drives a first ranking for the Supreme Court. And, increasing education positively drives a first rank for the Supreme Court to handle same-sex marriage, but negatively drives a first rank to handle online sales taxation. In fact, increasing education positively drives a third rank for the Supreme Court

to make policy on online sales taxation. Clearly, as education increases, the more likely that a respondent believes the issue of online sales taxation is best handled by an institution other than the Supreme Court. This same pattern emerges for age on the issue of Guantanamo Bay. As respondent age increases, the less likely that s/he will rank the Supreme Court first (and the more likely to rank it third) to handle the issue.

Finally, for the Supreme Court, on the issue of same-sex marriage alone, respondent level of attention to news drives preference. Increasing attention to news drives a first rank to make policy on the issue, while it also negatively drives a third rank.

[Insert Table 17a Here]

### *Congress*

In addition to authority driving first and third ranking on all three issues, some other interesting findings emerge. On the issue of same-sex marriage, both short- and long-term legitimacy positive drive a first ranking and negatively drive a third ranking. As short- and long-term legitimacy in Congress increase, so does the likelihood of a first ranking. And, as short- and long-term legitimacy increase, the likelihood of a third ranking decreases. This is to be expected, given the extant literature (outlined in Chapter II).

Women are less likely to rank Congress first to make policy on same-sex marriage, and Hispanics are more likely to rank Congress third. Conservatives are more likely to rank Congress first to make policy on this issue, while both conservatives and Republicans are less likely to rank Congress third. Finally, increasing family income predicts a lower likelihood of ranking Congress third on the issue.

On the issue of online sales taxation, long-term legitimacy matters, while short-term legitimacy does not. As long-term legitimacy in Congress increases, the likelihood of a first

ranking to handle the issue increases, while the likelihood of a third ranking decreases. On this issue, the only other significant variable is family income, such that as family income increases, the likelihood of a third ranking decreases.

On the issue of Guantanamo Bay, long-term legitimacy drives a first rank for Congress, while increased short-term legitimacy decrease the likelihood of a third ranking. Republicans are more likely to rank Congress first, and less likely to rank it third, on this issue. And, here increasing ideological distance predicts a greater likelihood of a first ranking, which is unexpected and difficult to explain without further information.

[Insert Table 17b Here]

### *Presidency*

As previously noted, authority to decide influences institutional preference in expected ways. In addition, institutional legitimacy also plays some role. Both short- and long-term legitimacy drive first and third rankings for the presidency to make policy on the issue of same-sex marriage, but in different ways. Here, increasing short-term legitimacy drives increased likelihood of a first, and decreased likelihood of a third, ranking. Long-term legitimacy is just the opposite – increasing long-term legitimacy drives decreased likelihood of a first ranking, and increased likelihood of a third. This sounds confusing, but it may be that respondents have a difficult time separating the person from the institution when it comes to the presidency. Unlike the other institutions, the executive branch has just one inhabitant at any given time, so when we talk about the presidency, respondents may immediately imagine the current inhabitant, as opposed to the office itself. In this sense, respondents may be conflating job approval with legitimacy when they think about the presidency, in ways that they do not with Congress or the Supreme Court.

Women and African Americans are also more likely to rank the presidency first on the issue of same-sex marriage. In addition, African Americans are also less likely to rank the presidency third on the issue. This may provide further evidence that short-term indicators are driving preference for the presidency.

Education drives both first and third ranking for the presidency on this issue, with increasing education predicting increased likelihood of a first rank, and decreased likelihood of a third. Increasing ideological distance drives a decreased likelihood of a first rank, as expected. And, increased attention to news drives a decreased likelihood of a first rank. Given that this survey was conducted at a time that the Supreme Court was expected to rule in the very near future on whether the federal Defense of Marriage Act was constitutional<sup>60</sup>, it may be that respondents attuned to the news expected that the issue was now a judicial matter.

On the issue of online sales taxation, increasing short-term legitimacy decreased the likelihood of a third rank for the presidency to make policy on the issue. Legitimacy does not rise to significance on this issue in any other way.

Again, though, African Americans are more likely to rank the presidency first, and less likely to rank the office third. And, here, increased attention to news drives a decreased likelihood of ranking the presidency first on the issue.

Finally, on the issue of Guantanamo Bay, when it comes to legitimacy, only short-term legitimacy matters to the presidency, such that increasing short-term legitimacy drives increased likelihood of a first rank, and decreased likelihood of a third rank.

African Americans are less likely to rank the presidency third to make policy on this issue. Likewise, increased ideological distance drives an increased likelihood of a third rank, as expected. Increasing education drives a decreased likelihood of a first ranking, while increasing

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<sup>60</sup> *United States v. Windsor* 570 U.S. \_\_\_\_ (2013)

age predicts increased likelihood of a first ranking. And, increasing attention to news drives a decreased likelihood of a first ranking.

[Insert Table 17c Here]

## CONCLUSION

In this chapter, I offer a consideration that has previously been left unstudied: that people may have preferences about the institution best-suited to handle a given policy issue. Source cues are known to effect policy, but, it appears that, perhaps, the reality is more complicated than the commonly held belief that policies from the courts are universally preferred (Birnbaum and Stegner 1979; Chaiken 1980; Delli Carpini and Keeter 1997; Mondak 1993a, 1993b, 1994). The results here reveal that respondents do, indeed, have preferences about which branch of American government handles certain issues. Specifically, when asked to rank institutions, respondents ranked the Supreme Court first to handle policy on the detention of combatants at the Guantanamo Bay Detention Facility and same-sex marriage. Respondents ranked Congress first to handle policy related to online sales taxation. Further, these preferences are driven by the general perception that each institution has some authority to even make policy in these issue areas.

Of the variables of interest, institutional authority to decide on each issue and short- and long-term legitimacy, institutional authority is a universal driver of institutional preference to make policy on each issue. Legitimacy is a more complicated story, however. Short-term legitimacy seems to drive preference for each institution much more so than long-term legitimacy, but the pattern is less discernable. When ranking is arranged on an increasing scale, it becomes clear that, for all institutions, high ranking is driven by short-term legitimacy on the issues of same-sex marriage and Guantanamo Bay (see Table 16), while high ranking is

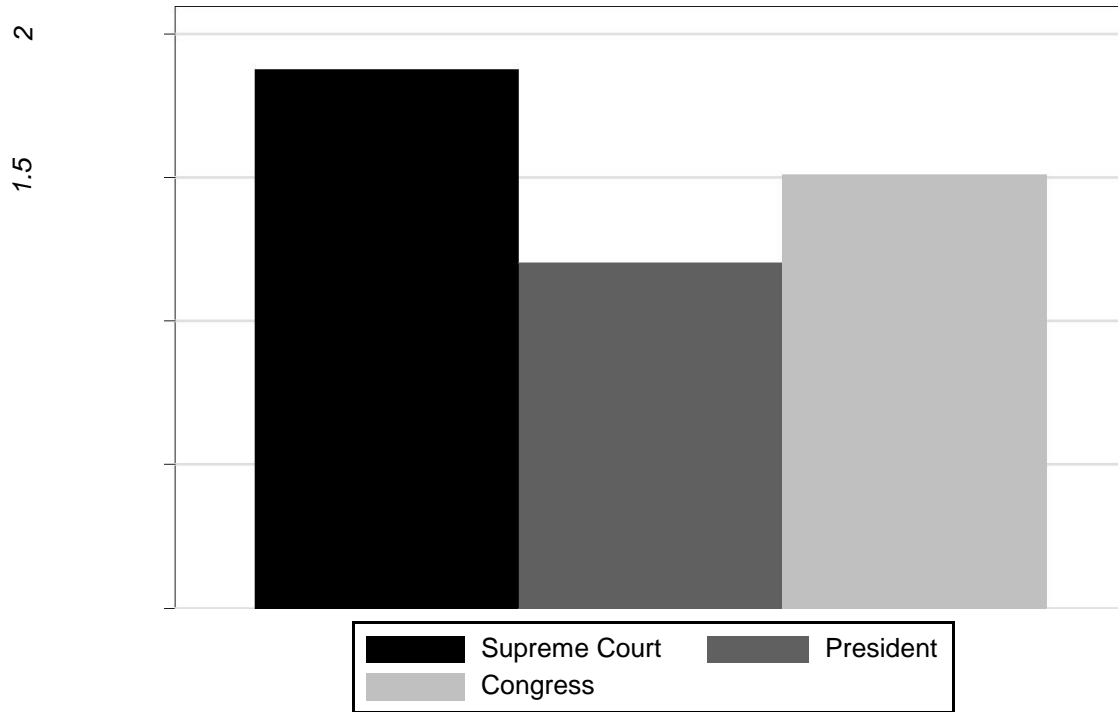


negatively driven by long-term legitimacy for all institutions on the issues of same-sex marriage and online sales taxation. When first rank is dummied out (see Tables 17a, 17b, and 17c), the picture becomes clearer, but changes little. Short-term legitimacy drives a first rank for the Supreme Court on all issues, same-sex marriage and Guantanamo Bay for the presidency, and same-sex marriage for Congress. Conversely, long-term legitimacy drives a first rank for Congress on all issues. Interestingly long-term legitimacy negatively drives a first rank for the Supreme Court on online sales taxation and for the presidency on same-sex marriage. These are fascinating findings and suggest that short- and long-term legitimacy matter differentially to the institutions. In a nutshell, the Supreme Court seems much more susceptible to short-term evaluations than the presidency and Congress. Congress, on the other hand, is susceptible much more so to changes in long-term legitimacy than are the presidency or the Supreme Court. If legitimacy matters to acceptance, as has been argued here, then these findings have clear implications for the policymaking by each of the institutions. Further, the fact that the perception that an institution has authority to decide on each of the issues is the one consistent driver of institutional preference suggests that the ability of an institution, or the inhabitants of an institution, to influence this perception can have strong implications for policy acceptance.

Taken together, findings summarized in the previous chapter and this one have helped to paint a picture of those variables that may influence policy acceptance – institutional legitimacy and institutional preference to handle certain issues. In Chapter III, I determined that legitimacy (across all three institutions) is largely driven by structural factors specific to the institutions. For instance, it seems that judicial and presidential legitimacy is harmed by the perception that it engages in politics or party interests, whereas congressional legitimacy is not affected by this. I also disaggregated and examined the traditional legitimacy index, ultimately arguing that the oft-

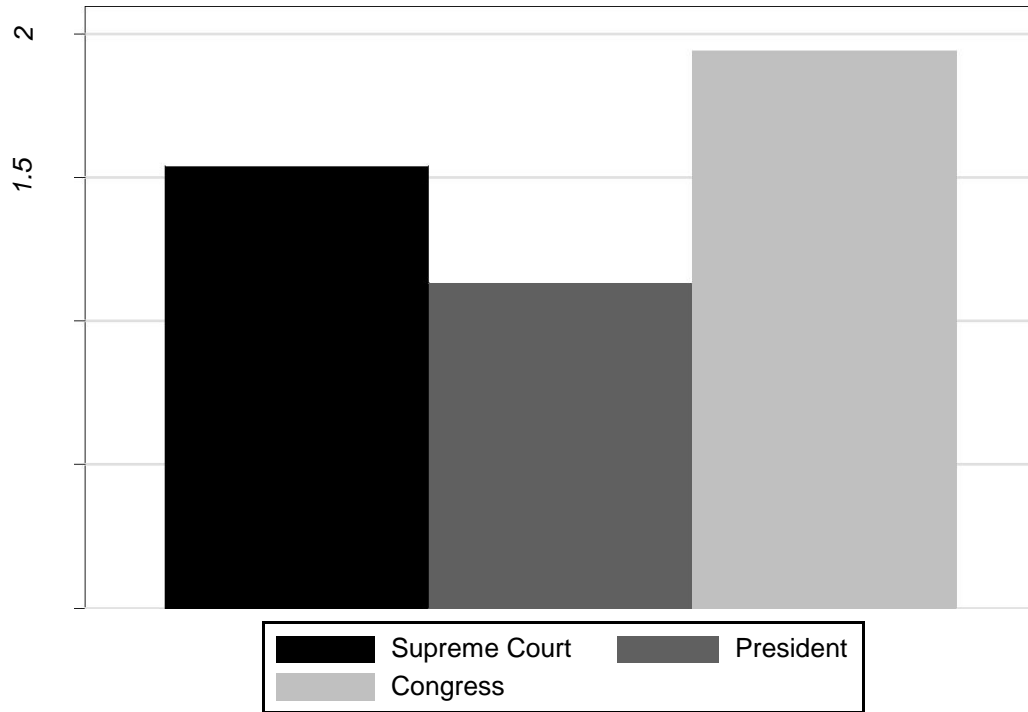
used index contains both shorter- and longer-term measures of institutional legitimacy. And, I constructed two separate institutional legitimacy indices (one short- and one long-term) to capture the differences and more accurately measure legitimacy. In this chapter, I have examined respondent preference of institutions to handle certain policies and among other things, have found that authority to make decisions on certain policies is a strong predictor of institutional preference to handle particular issues. In the next chapter, I will take these findings and use them to analyze and understand what drives policy acceptance when I consider whether respondent preferences affect reaction to, and evaluation of, policy emanating from the institution. It is important to note here that institutional legitimacy and institutional preference will be utilized as independent variables in the policy acceptance model developed in the next chapter. This may seem like a methodological error; however, I argue that some path dependence between legitimacy, preference, and acceptance may exist, in which the legitimacy and preference variables influence each other, but still have an independent impact on acceptance. As such, it is entirely appropriate to have also included legitimacy as an independent variable in the rank models developed here.

**Figure 4a: Authority to Decide on Same Sex Marriage, by Branches (Mean)<sup>61</sup>**

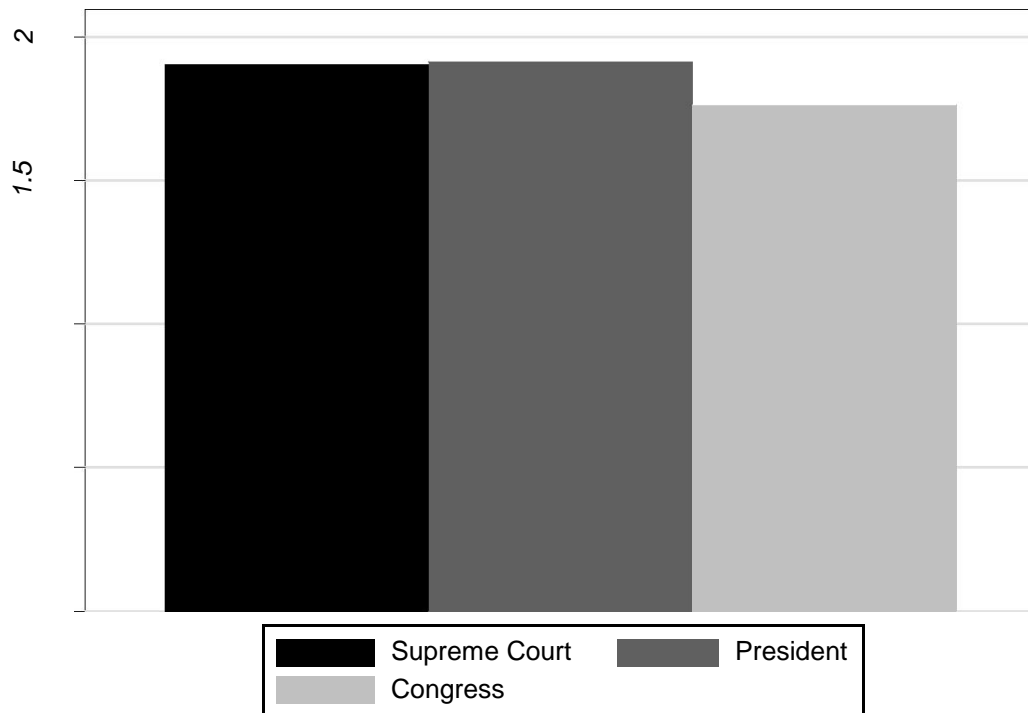


<sup>61</sup> Figures 5a, 5b, and 5c capture the overall mean response for each institution on the question of which institution has authority to make policy on each issue. The responses fall on a four-point scale, meaning that total authority result in a 4.0 score. Here, we see that on the issue of same-sex marriage, most respondents agreed that the Supreme Court has authority to make policy in this area, more so than the presidency or Congress. On the issue of online sales taxation, most respondents agreed that Congress has authority in this area, and on Guantanamo Bay, most respondents agreed that the President has authority (just barely edging out the Supreme Court).

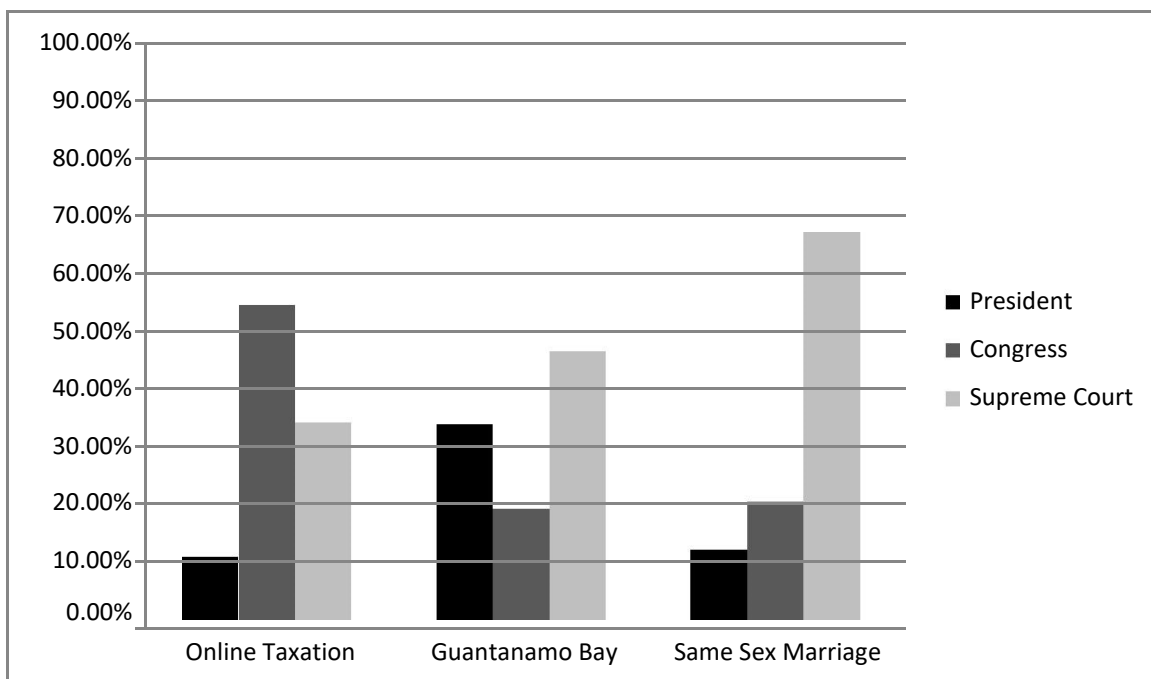
**Figure 4b: Authority to Decide on Online Taxation, by Branches (Mean)**



**Figure 4c: Authority to Decide on Guantanamo Bay, by Branches (Mean)**

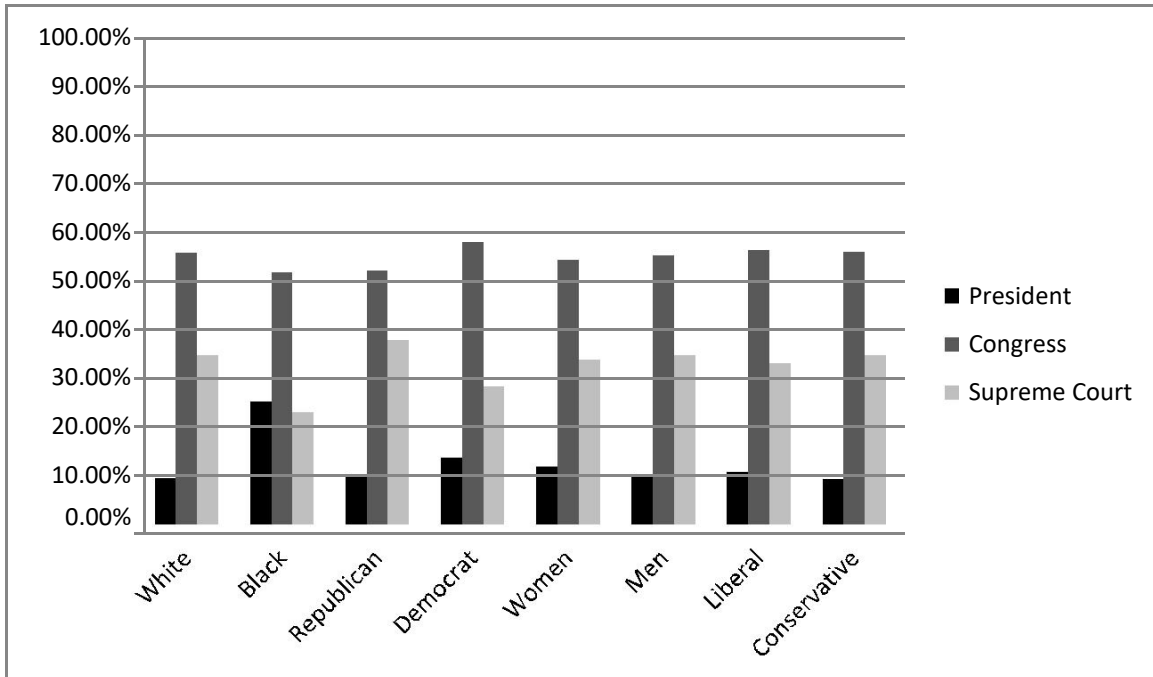


**Figure 5: First Rank, by Branch of Government<sup>62</sup>**



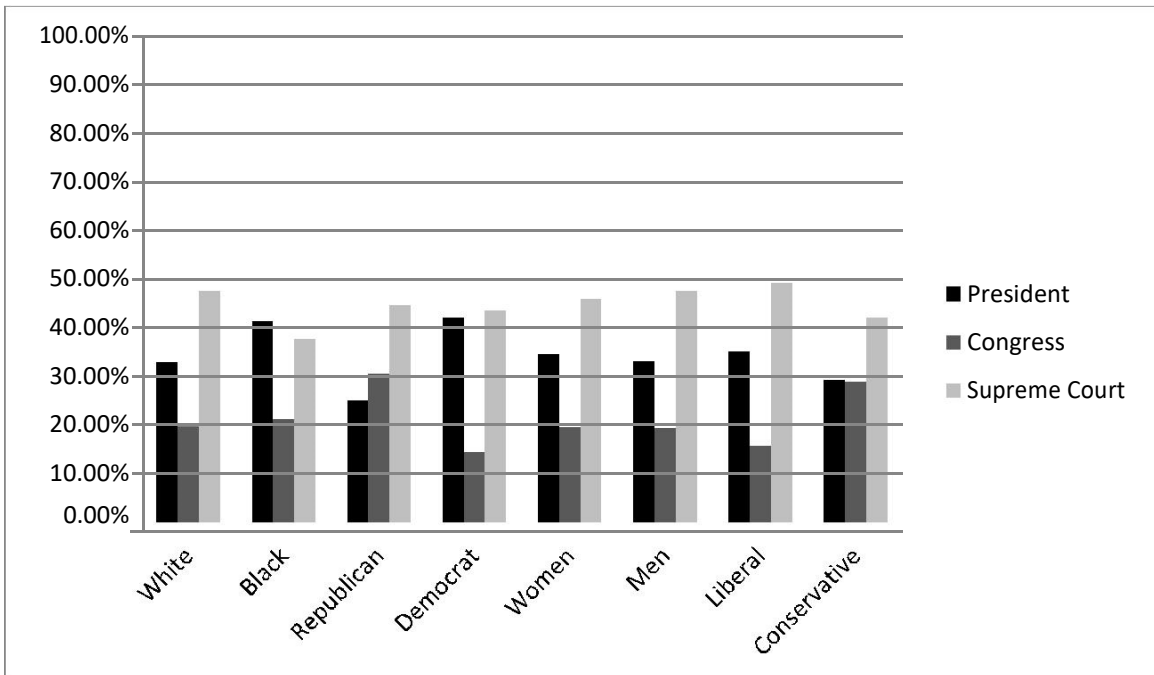
<sup>62</sup> This figure captures the percentage of respondents that ranked each institution first to handle each of the issues. Clearly, most respondents ranked Congress first to handle online sales taxation, and the Supreme Court to handle Guantanamo Bay and same-sex marriage. On the other hand, on the issues of online sales taxation and same-sex marriage, the least number of respondents ranked the President first. And, on the issue of Guantanamo Bay, the least number of respondents ranked Congress first.

**Figure 6a: First Rank - Online Taxation, by Demographics<sup>63</sup>**

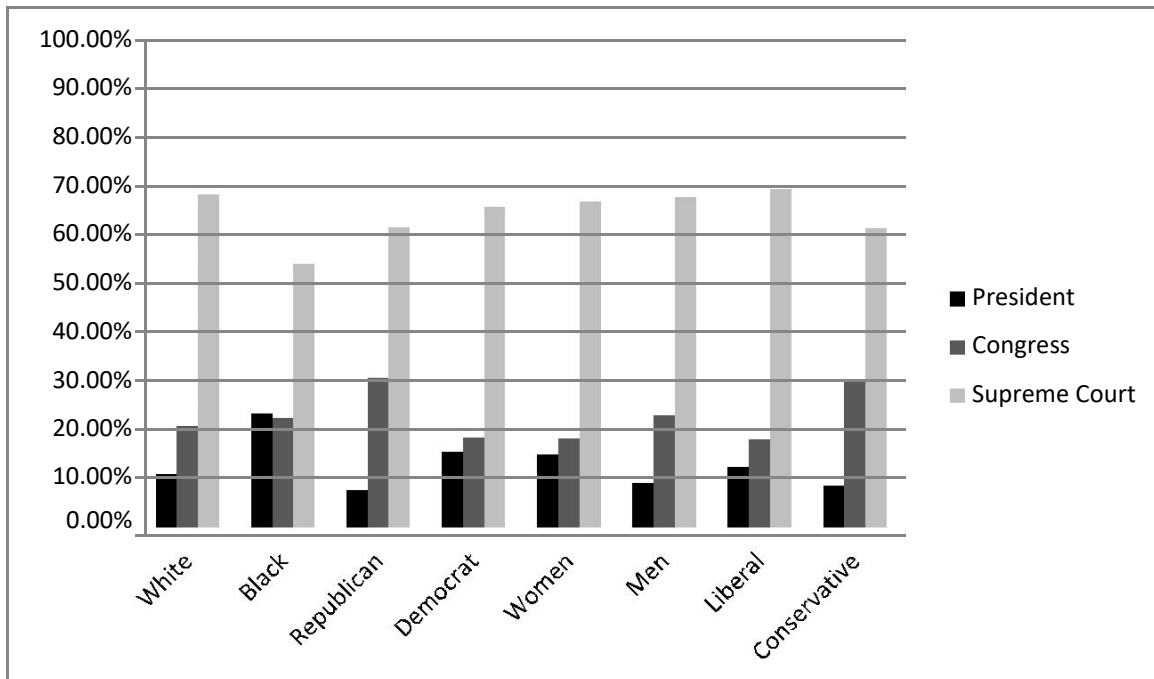


<sup>63</sup> Figures 6a, 6b, and 6c reflect the percentages of respondents that rank each institution first to handle each issue; however, these rankings are broken out by demographics. Largely, the findings reflect the picture provided in Figure 5 (most respondents rank Congress first to make policy on online sales taxation, and the Supreme Court first to make policy on Guantanamo Bay and same-sex marriage) with one notable exception. African Americans are the only demographic (of those displayed) in which most respondents ranked the President first (as opposed to the Supreme Court) to handle the issue of Guantanamo Bay. This finding could reflect a short-term evaluation of the institutions.

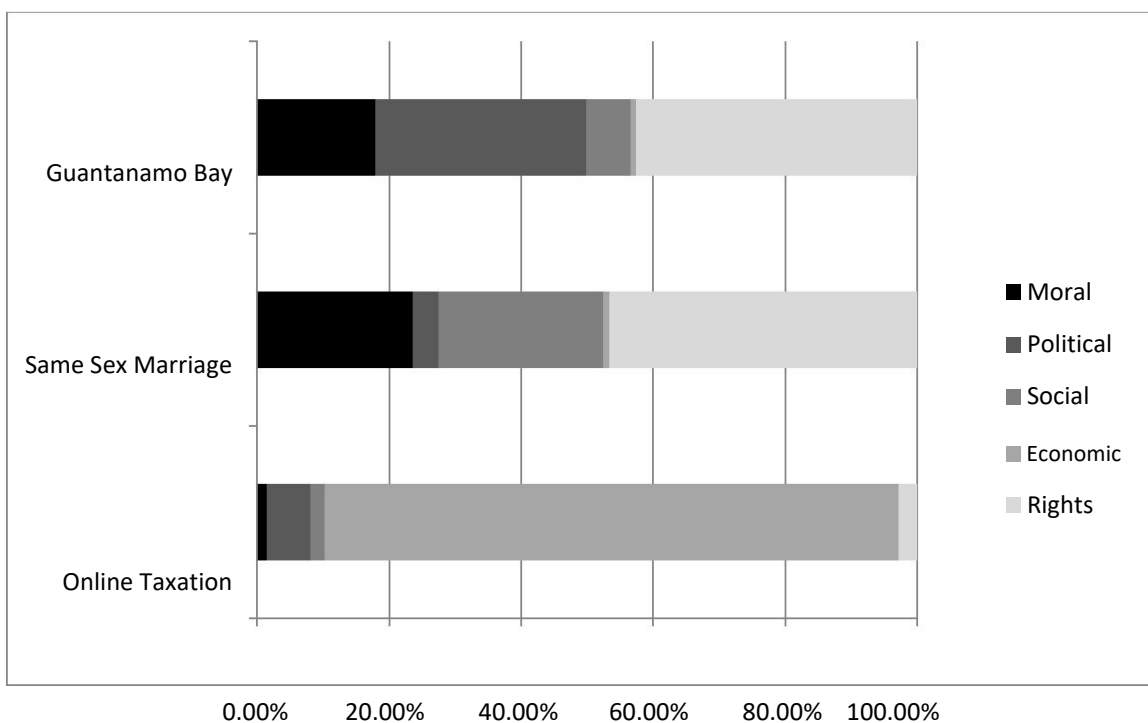
**Figure 6b: First Rank - Guantanamo Bay, by Demographics**



**Figure 6c: First Rank - Same Sex Marriage, by Demographics**



**Figure 7: Issue Categorization<sup>64</sup>**



<sup>64</sup> Respondents were asked, on each issue, if they thought it was primarily a moral, political, social, economic, or rights-based issue. Here, those percentages for each issue are presented. More respondents view same-sex marriage and Guantanamo Bay as rights-based issues than any other category; and, more (in fact, a majority) view online sales taxation as an economic issue.





**Table 12a: Difference of Means – Lowest and Highest Rankings<sup>65</sup>**

	<b>Same Sex Marriage (President and Supreme Court)</b>	<b>Online Taxation (Congress and President)</b>	<b>Guantanamo Bay (Supreme Court and Congress)</b>
Spearman's Rho	<b>-1.4851***</b>	<b>-1.1305***</b>	<b>-0.4125***</b>
N=	1624	1344	1621

**Table 12b: Difference of Means – Two Highest Rankings**

	<b>Same Sex Marriage (Supreme Court and Congress)</b>	<b>Online Taxation (Congress and Supreme Court)</b>	<b>Guantanamo Bay (Supreme Court and President)</b>
Spearman's Rho	<b>-0.4775***</b>	<b>-0.6497***</b>	<b>-0.6424***</b>
N=	1624	1344	1621

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<sup>65</sup> Tables 12a and 12b reflect the results of Spearman's Rho difference of means tests on each issue – one between the lowest and highest rankings to handle each issue, and one between the two highest rankings to handle each issue. On each issue, the rankings are significantly different from each other.

**Table 13: Multinomial Logit of Institution Ranked First: Same Sex Marriage (SC Base Outcome)<sup>66</sup>**

\* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01

Variable	Coefficient (Standard Error)	
	<i>President</i>	<i>Congress</i>
Presidency Legitimacy – Long	-0.0413 (0.0542)	-0.0352 (0.0723)
Presidency Legitimacy – Short	0.0408 (0.0328)	<b>0.1819***</b> <b>(0.0455)</b>
Congress Legitimacy – Long	<b>0.1304**</b> <b>(0.0511)</b>	-0.0854 (0.0625)
Congress Legitimacy – Short	<b>0.1900***</b> <b>(0.0375)</b>	<b>0.1505***</b> <b>(0.0487)</b>
Supreme Court Legitimacy – Long	-0.0019 (0.0494)	0.0543 (0.0663)
Supreme Court Legitimacy - Short	<b>-0.2464***</b> <b>(0.0414)</b>	<b>-0.3211***</b> <b>(0.0557)</b>
President Authority	0.0184 (0.1129)	<b>1.1471***</b> <b>(0.1468)</b>
Congress Authority	<b>0.7391***</b> <b>(0.1120)</b>	0.1154 (0.1341)
Supreme Court Authority	<b>-0.9364***</b> <b>(0.1076)</b>	<b>-0.9382***</b> <b>(0.1386)</b>
Female	<b>-0.3861**</b> <b>(0.1570)</b>	0.3352 (0.2076)
Black	0.3976 (0.3053)	<b>0.6357*</b> <b>(0.3261)</b>
Asian	-0.4504 (0.3417)	0.2730 (0.3940)
Hispanic	-0.1150 (0.3640)	-0.1335 (0.4354)
Conservative	-0.0446 (0.2649)	0.4171 (0.3488)
Republican	0.1222 (0.2515)	-0.0176 (0.3710)
Ideological Distance	0.1321 (0.1088)	-0.1824 (0.1444)
Education	-0.0445 (0.0506)	<b>-0.2466***</b> <b>(0.0727)</b>
Age	-0.0613 (0.0521)	0.0042 (0.0691)
Family Income	0.0034 (0.0243)	-0.0462 (0.0336)
Attention to News	-0.0365 (0.0407)	<b>-0.1258**</b> <b>(0.0525)</b>

LL = -947.56187; LR chi2(40) = 524.59, prob > chi2 = 0.0000; pseudo R2 = 0.2168; N = 1430.

<sup>66</sup> Tables 13, 14, and 15 highlight the results of multinomial logistic regression, in which the dependent variable is a first ranking of each institution to make policy in the issue area. In each model, the base outcome is the institution that most respondents say has authority to make policy in that issue area: the Supreme Court for same-sex marriage, Congress for online sales taxation, and the presidency for Guantanamo Bay. Largely, the results highlight the fact that increasing authority matters to increased institutional ranking to make policy in each area.

**Table 14: Multinomial Logit of Institution Ranked First: Online Taxation (Congress Base Outcome)**

\* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01

Variable	Coefficient (Standard Error)	
	<i>President</i>	<i>Supreme Court</i>
Presidency Legitimacy – Long	-0.0116 (0.0764)	-0.0423 (0.0499)
Presidency Legitimacy – Short	0.0363 (0.0479)	-0.0445 (0.0296)
Congress Legitimacy – Long	-0.1033 (0.0649)	-0.0107 (0.0430)
Congress Legitimacy – Short	0.0539 (0.0520)	<b>-0.0681**</b> <b>(0.0336)</b>
Supreme Court Legitimacy – Long	-0.0120 (0.0699)	-0.0520 (0.0450)
Supreme Court Legitimacy – Short	<b>-0.1074**</b> <b>(0.0573)</b>	<b>0.1314***</b> <b>(0.0369)</b>
President Authority	<b>1.2296***</b> <b>(0.1725)</b>	0.1770 (0.1120)
Congress Authority	<b>-0.9865***</b> <b>(0.1640)</b>	<b>-0.8778***</b> <b>(0.1127)</b>
Supreme Court Authority	0.1569 (0.1479)	<b>0.8796***</b> <b>(0.0996)</b>
Female	0.0487 (0.2213)	0.0005 (0.1444)
Black	<b>1.0199***</b> <b>(0.3250)</b>	-0.1491 (0.3139)
Asian	0.2876 (0.4230)	0.0765 (0.2859)
Hispanic	-0.0704 (0.4614)	-0.4926 (0.3543)
Conservative	-0.1957 (0.3776)	-0.0686 (0.2515)
Republican	0.2582 (0.3711)	0.3476 (0.2430)
Ideological Distance	0.0794 (0.1505)	-0.0250 (0.1006)
Education	-0.0381 (0.0736)	<b>-0.0829*</b> <b>(0.0462)</b>
Age	-0.0160 (0.0749)	-0.0027 (0.0476)
Family Income	-0.0091 (0.0363)	-0.0004 (0.0228)
Attention to News	-0.0103 (0.0581)	-0.0370 (0.0384)

LL = -956.34888; LR chi2(40) = 315.80, prob > chi2 = 0.0000; pseudo R2 = 0.1417; N = 1188.

**Table 15: Multinomial Logit of Institution Ranked First: Guantanamo Bay (President Base Outcome)**

\*  $p < 0.10$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$

Variable	Coefficient (Standard Error)	
	<i>Congress</i>	<i>Supreme Court</i>
Presidency Legitimacy – Long	-0.0624 (0.0612)	-0.0630 (0.0507)
Presidency Legitimacy – Short	<b>-0.1382***</b> <b>(0.0352)</b>	<b>-0.1223***</b> <b>(0.0297)</b>
Congress Legitimacy – Long	<b>0.2257***</b> <b>(0.0546)</b>	<b>0.0929**</b> <b>(0.0297)</b>
Congress Legitimacy – Short	0.0190 (0.0400)	-0.0310 (0.0331)
Supreme Court Legitimacy – Long	<b>-0.1367**</b> <b>(0.0550)</b>	-0.0646 (0.0455)
Supreme Court Legitimacy - Short	0.0464 (0.0430)	<b>0.1070***</b> <b>(0.0355)</b>
President Authority	<b>-0.9862***</b> <b>(0.1371)</b>	<b>-1.0932***</b> <b>(0.1186)</b>
Congress Authority	<b>0.8074***</b> <b>(0.1377)</b>	-0.0248 (0.1023)
Supreme Court Authority	-0.0211 (0.1102)	<b>1.0604***</b> <b>(0.1021)</b>
Female	0.0223 (0.1719)	0.0864 (0.1401)
Black	0.2333 (0.3256)	0.0061 (0.2741)
Asian	-0.1221 (0.3539)	0.0789 (0.2776)
Hispanic	-0.4252 (0.4479)	0.0503 (0.3177)
Conservative	-0.2312 (0.3001)	-0.1168 (0.2623)
Republican	0.0296 (0.2880)	-0.0430 (0.2570)
Ideological Distance	0.1561 (0.1213)	-0.0458 (0.1043)
Education	<b>0.1090**</b> <b>(0.0542)</b>	0.0367 (0.0450)
Age	-0.0027 (0.0559)	<b>-0.1354***</b> <b>(0.0465)</b>
Family Income	-0.0088 (0.0268)	-0.0180 (0.0219)
Attention to News	0.0334 (0.0454)	<b>0.0658*</b> <b>(0.0367)</b>

LL = -1249.2602; LR  $\chi^2(40) = 484.92$ ,  $\text{prob} > \chi^2 = 0.0000$ ; pseudo  $R^2 = 0.1625$ ;  $N = 1433$ .

**Table 16: Rank Ordered Logistic Regression, by Issue<sup>67</sup>**  
 \* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01

	Same Sex Marriage	Guantanamo Bay	Online Taxation
Long-Term Legitimacy	<b>-0.0947***</b> (0.0192)	0.0027 (0.0180)	<b>-0.0537***</b> (0.0194)
Short-Term Legitimacy	<b>0.1102***</b> (0.0102)	<b>0.1043***</b> (0.0096)	-0.0075 (0.0105)
Institutional Authority	<b>1.1301***</b> (0.0479)	<b>0.8699***</b> (0.0453)	<b>1.0139***</b> (0.0468)
N=	4775	4777	3945

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<sup>67</sup> Here, a rank-ordered logistic regression on the primary independent variable that drives the likelihood of a first ranking to handle certain issues (see Tables 13, 14, and 15), reveals that ranking, in general (as the dependent variable here is the likelihood of an increasing ranking), is driven by institutional authority to make policy on each of the issues.

**Table 17a: Logistic Regression, Supreme Court by First and Third Rank<sup>68</sup>**

\* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01

	Same Sex Marriage		Online Sales Taxation		Guantanamo Bay	
	Rank One	Rank Three	Rank One	Rank Three	Rank One	Rank Three
Legitimacy (Long)	0.0199 (0.0310)	<b>-0.0815**</b> ( <b>0.0412</b> )	<b>-0.0629*</b> ( <b>0.0328</b> )	<b>0.0647**</b> ( <b>0.0325</b> )	-0.0284 (0.0291)	<b>0.0031*</b> ( <b>0.0313</b> )
Legitimacy (Short)	<b>0.1526***</b> ( <b>0.0292</b> )	<b>-0.1611***</b> ( <b>0.0387</b> )	<b>0.0696**</b> ( <b>0.0301</b> )	0.0036 (0.0294)	<b>0.0503*</b> ( <b>0.0266</b> )	-0.0359 (0.0287)
Authority to Decide	<b>0.6354***</b> ( <b>0.0742</b> )	<b>-0.4103***</b> ( <b>0.0944</b> )	<b>0.6808***</b> ( <b>0.0858</b> )	<b>-0.5656***</b> ( <b>0.0806</b> )	<b>0.8863***</b> ( <b>0.0814</b> )	<b>-0.7748***</b> ( <b>0.0800</b> )
Female	0.0089 (0.1255)	-0.0674 (0.1700)	-0.0263 (0.0858)	-0.0572 (0.1314)	0.0064 (0.1159)	-0.1320 (0.1253)
Black	<b>-0.6300***</b> ( <b>0.2331</b> )	<b>0.5414*</b> ( <b>0.2850</b> )	<b>-0.5706**</b> ( <b>0.2871</b> )	<b>0.6227***</b> ( <b>0.2413</b> )	-0.2226 (0.2287)	0.2495 (0.2334)
Asian	0.0290 (0.2602)	-0.3991 (0.3984)	0.0527 (0.2580)	-0.2684 (0.2697)	0.0997 (0.2335)	0.0974 (0.2465)
Hispanic	-0.2098 (0.2804)	0.5331 (0.3381)	-0.3347 (0.3108)	<b>0.6830**</b> ( <b>0.2826</b> )	0.0476 (0.2684)	0.2110 (0.2859)
Conservative	-0.1029 (0.1871)	-0.0892 (0.2605)	-0.0612 (0.1996)	-0.0884 (0.2024)	-0.0468 (0.1814)	-0.0746 (0.1916)
Republican	-0.0654 (0.2029)	-0.1043 (0.2810)	<b>0.3889*</b> ( <b>0.2109</b> )	-0.3132 (0.2211)	0.1406 (0.1955)	0.0186 (0.2090)
Ideological Distance	-0.0410 (0.0575)	0.1069 (0.0763)	<b>-0.1047*</b> ( <b>0.0615</b> )	0.0844 (0.0607)	-0.0398 (0.0543)	-0.0087 (0.0584)
Education	<b>0.0816**</b> ( <b>0.0417</b> )	0.0473 (0.0556)	<b>-0.0972**</b> ( <b>0.0424</b> )	<b>0.0781*</b> ( <b>0.0415</b> )	-0.0221 (0.0370)	0.0612 (0.0399)
Age	0.0367 (0.0419)	0.0078 (0.0573)	0.0154 (0.0437)	-0.0440 (0.0432)	<b>-0.1536***</b> ( <b>0.0388</b> )	<b>0.1122***</b> ( <b>0.0413</b> )
Family Income	0.0256 (0.0201)	-0.0121 (0.0274)	-0.0009 (0.0209)	0.0016 (0.0209)	-0.0163 (0.0184)	-0.0150 (0.0201)
Attention to News	<b>0.1018***</b> ( <b>0.0320</b> )	<b>-0.1539***</b> ( <b>0.0441</b> )	-0.0200 (0.0341)	-0.0133 (0.0337)	0.0339 (0.0297)	0.0124 (0.0324)
N=	1475	1475	1232	1232	1479	1479
Adj R <sup>2</sup>	1140	0.0868	0.0634	0.0494	0.0867	0.0720

<sup>68</sup> Table 17a reflects logistic regression, in which the dependent variable (a first and third rank for the Supreme Court on each issue), is modeled to determine the primary indicators of these rankings. The variables of interest, authority to decide and short- and long-term legitimacy operate in interesting ways. First, perception that the Court has the authority to decide determines rank in expected ways for all issues. Second, short-term legitimacy significantly drives a first ranking for all issues, while long-term legitimacy *negatively* drives a first rank for online sales taxation only. Clearly, short-term legitimacy matters more to Supreme Court ranking as best-suited to make policy on all three issues than does long-term legitimacy.

**Table 17b: Logistic Regression, Congress by First and Third Rank<sup>69</sup>**

\* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01

	Same Sex Marriage		Online Sales Taxation		Guantanamo Bay	
	Rank One	Rank Three	Rank One	Rank Three	Rank One	Rank Three
Legitimacy (Long)	<b>0.0820**</b> (0.0391)	<b>-0.1676***</b> (0.0341)	<b>0.0746**</b> (0.0329)	<b>-0.2086***</b> (0.0500)	<b>0.1085***</b> (0.0398)	-0.0418 (0.0300)
Legitimacy (Short)	<b>0.1074***</b> (0.0342)	<b>-0.0847***</b> (0.0326)	-0.0053 (0.0295)	0.0172 (0.0454)	0.0375 (0.0348)	<b>-0.0680**</b> (0.0280)
Authority to Decide	<b>0.3524***</b> (0.0958)	<b>-0.3877***</b> (0.0844)	<b>0.6969***</b> (0.1024)	<b>-0.7351***</b> (0.1347)	<b>0.6070***</b> (0.1209)	<b>-0.4406***</b> (0.0876)
Female	<b>-0.4936***</b> (0.1579)	0.1546 (0.1443)	-0.0381 (0.1383)	0.1155 (0.2167)	0.0348 (0.1608)	0.1506 (0.1264)
Black	0.1343 (0.2958)	0.0950 (0.2593)	0.0416 (0.2640)	0.1095 (0.3758)	0.3612 (0.2877)	-0.1305 (0.2366)
Asian	-0.4122 (0.3173)	0.0338 (0.2957)	-0.0902 (0.2680)	0.1946 (0.4052)	0.1045 (0.3142)	-0.1788 (0.2539)
Hispanic	-0.1533 (0.3693)	<b>0.5117*</b> (0.3020)	0.1363 (0.3135)	-0.6237 (0.5630)	-0.0593 (0.3822)	-0.2135 (0.2984)
Conservative	<b>0.4562*</b> (0.2620)	<b>-0.5967**</b> (0.2945)	0.0503 (0.2459)	-0.1737 (0.3884)	-0.2149 (0.2802)	0.1138 (0.2383)
Republican	0.1674 (0.2570)	<b>-0.6049*</b> (0.3176)	-0.2141 (0.2447)	-0.1113 (0.3971)	<b>0.5995**</b> (0.2638)	<b>-0.7300***</b> (0.2596)
Ideological Distance	0.0629 (0.0783)	-0.0182 (0.0720)	0.0912 (0.0681)	-0.0989 (0.1046)	<b>0.2007**</b> (0.0807)	-0.0851 (0.0635)
Education	0.0037 (0.0493)	-0.0582 (0.0474)	0.0493 (0.0442)	-0.0900 (0.0742)	0.0064 (0.0486)	0.0315 (0.0397)
Age	-0.0663 (0.0525)	0.0062 (0.0481)	0.0018 (0.0454)	0.0175 (0.0699)	0.0824 (0.0528)	-0.0368 (0.0417)
Family Income	-0.0101 (0.0247)	<b>-0.0525**</b> (0.0238)	0.0170 (0.0222)	<b>-0.0935**</b> (0.0382)	0.0206 (0.0253)	-0.0074 (0.0202)
Attention to News	-0.0401 (0.0410)	0.0408 (0.0369)	0.0339 (0.0361)	0.0660 (0.0557)	-0.0222 (0.0420)	0.0189 (0.0329)
N=	1237	1237	1019	1019	1238	1238
Adj R <sup>2</sup>	0.0579	0.0811	0.0564	0.1021	0.0578	0.0432

<sup>69</sup> Table 17b reflects logistic regression, in which the dependent variable (a first and third rank for Congress on each issue), is modeled to determine the primary indicators of these rankings. The variables of interest, authority to decide and short- and long-term legitimacy drive rank in interesting ways.. First, as with the Supreme Court, perception that Congress has the authority to decide determines rank in expected ways for all issues. Second, short-term legitimacy significantly drives a first ranking for same-sex marriage only, while long-term legitimacy drives a first ranking for all issues. This is strikingly different from the way that legitimacy operates for the Supreme Court. For the Court, short-term legitimacy drove a first ranking. For Congress, though, it appears that long-term legitimacy is what drives first ranking to make policy on all issues.



**Table 17c: Logistic Regression, Presidency by First and Third Rank<sup>70</sup>**

\* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01

	Same Sex Marriage		Online Sales Taxation		Guantanamo Bay	
	Rank One	Rank Three	Rank One	Rank Three	Rank One	Rank Three
Legitimacy (Long)	<b>-0.1078**</b> (0.0515)	<b>0.0997***</b> (0.0348)	-0.0899 (0.0557)	0.0068 (0.0349)	0.0076 (0.0352)	-0.0038 (0.0341)
Legitimacy (Short)	<b>0.1187***</b> (0.0384)	<b>-0.0955***</b> (0.0256)	0.0608 (0.0415)	<b>-0.0654**</b> (0.0256)	<b>0.1170***</b> (0.0251)	<b>-0.0943***</b> (0.0249)
Authority to Decide	<b>0.9640***</b> (0.1218)	<b>-0.8039***</b> (0.0822)	<b>0.9772***</b> (0.1495)	<b>-0.6854***</b> (0.0946)	<b>0.0888***</b> (0.0993)	<b>-1.0322***</b> (0.0964)
Female	<b>0.4718**</b> (0.1862)	0.0897 (0.1226)	0.0766 (0.2003)	0.1190 (0.1273)	-0.0282 (0.1225)	-0.0111 (0.1234)
Black	<b>0.7486***</b> (0.2793)	<b>-0.5173**</b> (0.2278)	<b>1.0239***</b> (0.2902)	<b>-0.6481***</b> (0.2515)	0.1148 (0.2312)	<b>-0.4670*</b> (0.2657)
Asian	0.2184 (0.3677)	0.2026 (0.2488)	0.1507 (0.3949)	0.2709 (0.2544)	0.1001 (0.2396)	0.0602 (0.2475)
Hispanic	-0.0853 (0.3865)	-0.3538 (0.2669)	0.3181 (0.3844)	-0.3200 (0.2841)	-0.1198 (0.2789)	0.2164 (0.2733)
Conservative	0.4712 (0.3005)	0.0984 (0.2172)	-0.0135 (0.3365)	-0.0876 (0.2180)	0.3186 (0.2162)	-0.2946 (0.2136)
Republican	-0.0261 (0.3365)	0.3264 (0.2282)	0.2326 (0.3423)	0.0481 (0.2178)	-0.1484 (0.2217)	0.1133 (0.2058)
Ideological Distance	<b>-0.1922*</b> (0.1065)	0.0039 (0.0733)	-0.0704 (0.1146)	0.0679 (0.0753)	-0.0383 (0.0750)	<b>0.1562**</b> (0.0760)
Education	<b>-0.2628***</b> (0.0657)	<b>0.0736*</b> (0.0400)	-0.0747 (0.0670)	-0.0239 (0.0402)	<b>-0.0745*</b> (0.0388)	-0.0063 (0.0387)
Age	-0.0331 (0.0621)	0.0171 (0.0415)	0.0255 (0.0680)	0.0211 (0.0418)	<b>0.0877**</b> (0.0401)	-0.0268 (0.0408)
Family Income	-0.0487 (0.0299)	0.0213 (0.0195)	-0.0363 (0.0332)	0.0221 (0.0202)	0.0124 (0.0192)	0.0044 (0.0194)
Attention to News	<b>-0.1267***</b> (0.0461)	0.0285 (0.0311)	-0.0228 (0.0512)	<b>-0.0569*</b> (0.0329)	<b>-0.0519*</b> (0.0314)	-0.0242 (0.0320)
N=	1476	1476	1220	1220	1475	1475
Adj R <sup>2</sup>	0.1755	0.1185	0.1065	0.0701	0.0967	0.1280

<sup>70</sup> Table 17c reflects logistic regression, in which the dependent variable (a first and third rank for the presidency on each issue), is modeled to determine the primary indicators of these rankings. The variables of interest, authority to decide and short- and long-term legitimacy drive these preferences in interesting ways. First, as with the other institutions, perception that the presidency has the authority to decide determines preference in expected ways for all issues. Second, short-term legitimacy significantly drives a first ranking for same-sex marriage and Guantanamo Bay, but not online sales taxation. Long-term legitimacy, on the other hand, matters to preference only on the issue of same-sex marriage, and it matters in the *negative*. It appears that short-term legitimacy is driving institutional preference for the presidency more so than long-term legitimacy.

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## CHAPTER V

### INFLUENCES ON POLICY ACCEPTANCE

Research on acceptance has sought to explain characteristics of an issue that may influence how well the public accepts policy related to the issue. It has not, however, explicitly considered the idea that institutional preference over issue resolution may also matter. Other factors considered by the literature on policy acceptance include salience (Grosskopf and Mondak 1998), religion (Olson, Cadge, and Harrison 2006); ideology (Kramer 1975), the degree to which a policy benefits a majority (Baumgartner and Jones 1993; Ingram, Schneider, and DeLeon 2007), or threatens other groups (Hetherington and Globetti 2002), and the level of controversy and incivility surrounding the issue (Nie and Wyman 2005; Mutz and Reeves 2005). Where the literature is lacking, however, is in explaining how institutional preference may drive policy acceptance, regardless of policy preference. We do know that source effects can influence perceptions of information (Chaiken 1980; Delli Carpini and Keeter 1997; Mondak 1993a; Birnbaum and Stegner 1979), as well as perceptions of policy (Mondak 1993b); and that the same policy may be accepted differentially dependent upon which institution made the policy (Mondak 1990). If, as was discussed in Chapter II, legitimacy drives authority which, in turn, drives acceptance, then it is important to fully examine how institutional legitimacy and other institutional characteristics inform our understanding of policy acceptance. Here, I make the argument that regardless of policy preference, institutional characteristics drive policy acceptance. The data presented in Chapter IV suggests that, rather than an overriding and consistent preference for the courts and away from Congress, as might be hypothesized given the research on legitimation, the courts are not always viewed as the most appropriate institution to

address certain issues. Indeed, the presidency and Congress may be the preferred institution to make policy in certain issue areas.

Most policy could be made by any one of the three branches of government. Indeed, all three have weighed in on issues like same-sex marriage, online taxation, and Guantanamo Bay. As mentioned earlier, I found that the public may deem some issues to be more appropriately resolved by one branch over the others. We might expect, then, that the public will be more willing to accept policies emanating from the “right” institution. Policy acceptance, in this view, is not simply a story about the court’s special ability to enhance acceptance due to its increased legitimacy (Hibbing and Theiss Morse 1995, 2002; Mondak 1994). Instead, the ability of the institution to legitimate policy may be directly related to the public’s view of its authority to do so in the particular area of policy in which it is working, in addition to our existing understanding about the influence of institutional legitimacy. The purpose of this chapter is to begin to examine this phenomenon.

Previous research has led us to believe that people “like” the courts more than the legislative and executive branches. We surmise that this is due, in part, to the fact that the courts are often seen to be less conflictual and more fair in their decision making processes (Benesh 2006; Hibbing and Theiss-Morse 2002; Tyler and Rasinski 1991). I argue that the reality is more complicated; that people may prefer the courts to handle some issues, but may prefer other institutions to handle others. And, people can vary in their acceptance of policies, based on certain aspects of the policy making process.

Here, I am interested in examining what factors influence a respondent’s acceptance of a policy (same-sex marriage, closing of Guantanamo Bay, and online sales taxation), expecting both institutional *and* issue characteristics to matter. As noted above, legitimacy likely matters,

as institutions in which people imbue more legitimacy make policies that, in turn, people are more likely to accept. As I discussed in Chapter III, legitimacy can be conceptualized as both short- and long-term, so, I construct two separate indices – the short-term legitimacy index comprised of only short-term variables, and the long-term legitimacy index comprised of only long-term variables. I include both indices in the modeling here, as they may inform acceptance differentially. It may be that short- and long-term legitimacy matter in different ways to acceptance of each of the policies. Respondent preference, conceptualized as rank to handle each issue (discussed in Chapter IV) may influence policy acceptance. Countermajoritarianism, a characteristic of the American Constitutional design, could have both institutional- and issue-level influence: for example, an issue perceived to be about preserving rights may seem best resolved by an institution removed from majority influence. As such, a variable is included in the acceptance models that captures respondent perception about an issue being primarily about rights. Finally, the level of politicization and controversy of an issue could also be important to policy acceptance. Variables representing respondent perception that an issue is primarily political and that an issue is controversial are included in the models.

## **DATA AND ANALYSIS**

Recall (from Chapter IV) the differences across institutions in terms of authority to make decisions and preference across institutions for each of the three issues considered here. There, I found that most respondents chose the United States Supreme Court as having the most authority to make same-sex marriage policy, followed by Congress, and then the presidency. On the issue of online taxation, most respondents chose Congress, followed by the Supreme Court, and then the presidency. Finally, on the issue of Guantanamo Bay, the presidency was chosen by most respondents, followed very closely by the Supreme Court, and then Congress. So, for each issue,

we see that a different branch of government is deemed the “caretaker” of making policy in that area. This clear distinction is valuable for this research, in that it helps to bolster the underlying argument here, which is that Americans do view policies in different ways and, further, hold beliefs that specific branches of government should handle certain types of policies. These findings do seem to make sense, in that taxation issues might be assigned to Congress (as it manages the country’s finances), Guantanamo Bay might be assigned to the presidency (foreign policy), and same-sex marriage to the Supreme Court (as the courts are often viewed through a lens of minority rights protection). So, there does seem to be some logic behind these assignments.

On the other hand, acceptance of decisions (as measured by an acceptance index compiled of oft-used questions, and outlined in Chapter II)<sup>71</sup> made on all three issues is highest when the decisionmaking is done by the Supreme Court (see Figures 9a, 9b, and 9c), which runs counter to the rankings and the assignment of authority to make decisions in certain areas (see Chapter IV for a discussion about this). For instance, while most respondents chose Congress as having authority to make decisions on the issue of online taxation, and is preferred most to handle the issue, decisions in this area made by Congress are accepted at lower rates than when decisions in this area are made by the Supreme Court. This may be due to the fact that Congress is also the least-liked of the three by the American public which, if this is the case, has very interesting policy implications, suggesting that specific support may, in part, be driving acceptance of policies. Specifically, it may be that people feel as if an institution is the “right,”

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<sup>71</sup> Table 18 contains Cronbach’s Alpha on the index for each decision made by each of the branches (both in support and against on each issue for each institution). It reveals that, largely, the index performs well as a measure of policy acceptance. Most indices of policy acceptance fall above .6; however, for some institutional decisions, the index falls below .6. Generally, it appears the index is less strong for each decision when the decision does not support same-sex marriage. Also, the indices for the Supreme Court appear to be less strong than they are for the other branches.

preferred, or most authoritative policymaker on a certain issue, but have such low specific support for that institution, and/or its inhabitants, that they accept the decisions on that issue area more when it comes from a less “right,” but more liked, institution. Likewise, the most respondents chose presidency as having authority to make policy on the issue of Guantanamo Bay, while the Supreme Court was most preferred to handle it. Respondents accepted decisions in this area at higher rates when they came from the Supreme Court.

These acceptance levels, overall, are relatively low, though. Remember, in the analysis here, only the respondents that received a policy that ran counter to their stated preference is included in each of the models of acceptance. Theoretically, I am interested in the influence of an institution to garner acceptance for policies that people do not want. It stands to reason that people will accept decisions from an institution that comport with their own preferences. Therefore, the models here consider only those respondents that received the policy outcome on an issue as it emanates from one of the institutions – a policy outcome that they do not desire. This allows me to more accurately observe policy acceptance (see Chapter II for a more thorough discussion of this). Table 19 reflects the actual percentages of acceptance for each policy coming from each institution. On each issue there are two possible outcomes. On each issue respondents received an outcome that ran counter to their stated preference from one of the three institutions (randomly chosen). For same-sex marriage they received either a policy outcome in which the institution supported same-sex marriage, or one that in which the institution opposed it. For online sales taxation, they received an outcome in which the institution requires businesses to collect online states sales tax, or one in which the institution does not require it. And, for Guantanamo Bay, respondents received an outcome in which the

institution required the closing of the detention facility, or one in which the institution required it remain open and accepting detainees.

[Insert Table 19 Here]

The analysis in Chapter IV identified some factors that influence institutional preference to make decisions. This preference may, in turn, influence acceptance of decisions. What explains these variable acceptance levels? Perhaps approval of the branch or person(s) occupying an institution at any given time influences acceptance. Or, perhaps long-term commitment to an institution matters. Maybe aspects of perception of the issues matter.

[Insert Figures 9a, 9b, and 9c Here]

Chapter II discusses the theoretical framework for the expectations outlined here. Remember that the results here, capturing acceptance of each of the policies, is based on policy outcomes that run counter to a respondent's stated preference. So, if a respondent supports same-sex marriage, s/he received a policy outcome from one of the institutions that opposes same-sex marriage. This is done in order to adequately measure acceptance of a policy. Of course respondents will accept policies with which they agree. Instead, I am interested in capturing respondent agreement with policies with which they may not, necessarily, agree.

I expect that institutional legitimacy will influence policy acceptance, but in different ways. The legitimacy index is divided into short- and long-term legitimacy, in accordance with the findings reported in Chapter III, and each was included in each model. Given that policies are developed and passed (or not passed) by current inhabitants of each institution, I expect that short-term legitimacy will significantly matter to policy acceptance, while long-term legitimacy will matter less so – although, given the fact that the literature theoretically supports the idea that institutional legitimacy impacts policy acceptance (see Chapter II for a discussion about this),



this is as much an exploratory analysis as it is firmly hypothesized. Since short-term legitimacy is tied to job approval (Hetherington 1998; Keele 2007; Mishler and Rose 2001), it makes sense that policies passed by incumbents may be utilized as information in respondent assessment of that job approval. Likewise, I expect that preference of an institution to handle policy in each area to matter in the same ways that I expect legitimacy to matter. Here, institutional preference is dummied as a first ranking (the previous chapter revealed that results do not change when this variable is dummied, as opposed to being coded onto an increasing scale). Additionally, an interaction variable of preference and legitimacy (for both short- and long-term) is included in each model, as it may be that institutional legitimacy levels may differ across level of institutional preference, such that policy acceptance is impacted.

A variable capturing general diffuse support for government (an additive index of long-term legitimacy variables for each institution) is included, as it may be that a general warm sentiment for the government, overall, may influence policy acceptance. Those that have high levels of diffuse support in the government may also be more likely to accept policies emanating from its institutions, regardless of whether they agree with the outcomes. Increasing perception that an issue is controversial should matter to acceptance, with acceptance levels being lower when a controversial issue is decided by the Court, and higher when it is decided by Congress and the presidency. This is rooted in the expectation that Congress and the presidency will engage in politics, whereas the Court is not expected to do so (Hibbing and Theiss-Morse 1995; 2002). To be sure, extant literature highlights the fact that this business of politics is distasteful and, thus, reflects poorly on Congress and the presidency; however, it also stands to reason that the *political* institutions may also be seen as equipped to deal in controversial and political areas more so than the Court. Finally, I expect that issues that are deemed to be rights-based to predict

increased policy acceptance when the Supreme Court decides the issue, and I expect this to matter more on the issue of same-sex marriage than online sales taxation or Guantanamo Bay.

Tables 20a, 20b, and 20c are linear regressions of acceptance of each of the issues for each branch of government, in which the dependent variable is an index of questions often utilized to measure policy acceptance (see Chapter II). Recall that the models explain level of acceptance for policies that run counter to respondent preference. Each model includes only those respondents that received the vignette that speaks to the issue presented in the model. So, on the issue of online sales taxation, only those respondents that received a vignette on that issue for that institution are included in the model. And, as explained in Chapter II, respondents received only vignettes in which the institution made policy that ran counter to their policy preferences. So, for example, respondents that support same-sex marriage received only one of the vignettes in which one of the institutions made policy against same-sex marriage. This holds true for the other two issues, as well.

[Insert Tables 20a, 20b, and 20c Here]

It is immediately apparent that the two legitimacy indices (short- and long-term) are functioning differently in the models. While long-term legitimacy carries significance on some issues (same-sex marriage policy emanating from the presidency and Guantanamo Bay and online sales taxation policies emanating from Congress), it is negatively related to acceptance of these policies. This is a fascinating outcome, revealing that long-term institutional legitimacy may not factor into policy acceptance on some issues some of the time, and may actually negatively impact acceptance on some issues sometimes. I am unsure how to explain this, but it seems to suggest that long-term legitimacy for some institutions on some issues actually harms that institution's ability to make policy in that area.

On the other hand, short-term legitimacy is significantly related to decision acceptance for all issues from all institutions. And, the signage is all positive, meaning that as short-term legitimacy in an institution increases, so does acceptance for any decision on each issue coming from that institution. More so than this speaks to long-term legitimacy, it may be that short-term legitimacy is much more the driver of policy acceptance than is long-term. These findings, alone, provide new scholarship to our understanding of policy acceptance and the role of institutional legitimacy in legitimating policy.

Additionally, these findings highlight the importance of accurately measuring institutional legitimacy. It may be that respondents are very distinctly separating the institution from its inhabitants, and these findings may be capturing it very clearly. And, on the issue of policy acceptance, it appears that short-term factors matter much more than long-term factors do, meaning that people consider an institution's inhabitants, and not necessarily the institution, when choosing whether to accept policies emanating from an institution. This has startling implications for democracy, especially the Court. In American democracy, members of the federal judiciary are appointed for life and, thus, cannot be removed through the political process. Should it engage in "bad" decisionmaking, there is no process by which Americans can replace members of the Court.

Further, these findings may be capturing the idea that respondents might feel that the inhabitants of an institution are appropriately handling an issue, but that the institution itself is not necessarily imbued with the authority to handle an issue. For instance, respondents may feel as if policy about Guantanamo Bay's operation is not properly situated with the presidency, but also feel as if the current president is appropriately situated to make policy in this area, and this consideration may be associated with short-term evaluations of that president. This suggests

that, even if an institution's long-term legitimacy is flagging, current inhabitants of that institution can still legitimate policy and, thus, enhance acceptance, if s/he/they can elevate his/her/their own approval in the public's opinion.

Preference for an institution to make policy (first ranking) reveals no consistent pattern. This runs directly counter to the argument in this dissertation that preferences should drive acceptance. The results here, being inconsistent and without uniformity, do not support the suggestion. It appears that, for the presidency, a preference to make policy on same-sex marriage predicts acceptance; for Congress, it matters to policymaking on the issue of Guantanamo Bay; and for the Supreme Court, preference to make policy on the issues of Guantanamo Bay and online sales taxation drive increased acceptance. Preference does not rise to significance on any other issue for any other branch.

As it relates to the interaction between long-term legitimacy and preference, increased diffuse support for an institution and increased preference assignment matters to Congress (see Figure 9a) on the issue of online sales taxation. Of those who do not rank the institution first to make policy on the issue of online sales taxation, as their long-term legitimacy in the institution increases, so does their estimated acceptance of online sales taxation policy coming from the presidency.

The interaction between short-term legitimacy and first rank only rises to the level of significance for Congress – and, here, it is significantly related to acceptance of policy on all issues. On the issue of same-sex marriage, for those who rank Congress first and for those who do not, as short-term legitimacy in the institution increases, so does acceptance of same-sex marriage policy coming from the institution. But, the effect is stronger for those who do not rank Congress first on this issue. On the issue of Guantanamo Bay, again, for those who rank

Congress first and those who do not, as short-term legitimacy increases, so does acceptance of policy on this issue coming from Congress. Here, though, the effect of short-term legitimacy is greater for those who rank Congress first on this issue. Finally, on the issue of online sales tax, the same general relationship exists; for those who rank Congress first to make policy on this issue, and for those who do not, increasing short-term legitimacy positively predicts policy acceptance. And, again, the slope for those who rank Congress first on this issue is more pronounced, meaning the effect of short-term legitimacy on first-rankers is greater.

It is also worth noting that policy acceptance on the issue of Guantanamo Bay and online sales taxation is higher for those who have short-term legitimacy in Congress and do not rank the institution first to handle the two issues. On the issue of same-sex marriage, respondents with low short-term legitimacy in Congress, regardless of whether they ranked the institution first to make policy on the issue, hold about the same level of low policy acceptance.

Clearly, the effect of short-term legitimacy, interacted with a first ranking, influences policy acceptance for issues coming from Congress. For two of the issues, Guantanamo Bay and online sales taxation, the effect of short-term legitimacy on policy acceptance is greater for those who prefer Congress to make policy in those issue areas than for those who do not.

[Insert Figures 9a, 9b, 9c, and 9d Here]

As it pertains to general governmental diffuse support, there is no discernible pattern, except that it does not predict policy acceptance for any policy outcome emanating from the Supreme Court. It does, however, significantly predict policy acceptance for same-sex marriage policy coming from the presidency, and Guantanamo Bay and online sales taxation policy coming from Congress. For each, as diffuse government support increases, so does acceptance of policy on those issues emanating from the respective institutions.

In addition to these findings, I turn now to some scattered interesting findings more specific to each branch of government on specific issues.

### ***Guantanamo Bay***

#### *Presidency*

Aside from the aforementioned relationships, the perception of the issue of Guantanamo Bay to be controversial impacts policy acceptance. Specifically, as perception of the issue to be controversial increases, the level of acceptance of policy emanating from the presidency decreases. This may mean that perception of issue controversy drives respondents on this issue to prefer a different branch to make policy in this area. Additionally, for the presidency, on the issue of Guantanamo Bay, as ideological distance increases, acceptance of policy decreases. And, conservatives are significantly more likely to accept Guantanamo Bay policy coming from the presidency. This may be related to a perception that such policy coming from the executive branch is appropriate, given the presidency's foreign policy supremacy.

#### *Congress*

Beyond the previous mentioned predictors of policy acceptance on this issue, females are less likely to accept Guantanamo Bay policy coming from Congress, while Republicans are more likely. Perception of the issue as being controversial predicts decreased acceptance of the policy, while increasing family income predicts increasing acceptance. Finally, increasing attention to news predicts decreased policy acceptance on this issue coming from Congress.

#### *Supreme Court*

Increasing attention to news is significantly and negatively related to acceptance of Guantanamo Bay policy coming from the Court, as well. An increasing attention to news may suggest that certain narratives frame the perception of which branch of government *should* be

handling certain issues, or may insinuate that certain branches are more aptly designed or structured to handle certain issues.

As with the presidency and Congress on this issue, perception that the issue is controversial negatively predicts acceptance for policy coming from the Supreme Court. This would support the argument that respondents are just less likely to accept policy on any issue when it is controversial, regardless of the institution making the policy. This, coupled with the fact that perception of the issue as being primarily political also leads to decreased acceptance, suggests that, for Guantanamo Bay policy anyway, politicization and conflict surrounding the issue depress acceptance. On the other hand, and interestingly, perception that the issue is about rights also predicts decreased acceptance of Guantanamo policy coming from the Court.

Additionally, increasing ideological distance predicts decreased acceptance of Guantanamo Bay policy coming from the Supreme Court. Finally, Asians and conservatives are significantly more likely to accept decisions on Guantanamo Bay coming from the Supreme Court.

### ***Online Sales Taxation***

#### *Presidency*

In addition to the aforementioned significant relationships, increasing age is significantly and negatively related to acceptance of a decision in this area coming from the presidency. This may be due to an increased level of economic comfort associated with age or, perhaps, an increasing anxiety associated with losing financial security, leading respondents to prefer another branch handle taxation issues. Increasing attention to news also depresses acceptance, suggesting that, perhaps, increased knowledge leads respondents to accept this type of policy less

when it comes from the presidency. Alternatively, it may also suggest that the news narrative frames this issue as one “belonging” to another branch, such as Congress.

### *Supreme Court*

Aside from the aforementioned variables, only increasing education also matters to acceptance of online sales taxation policy, such that increased education predicts increased acceptance. Given extant literature about the relationship between education and the Supreme Court (see, i.e., Benesh 2006), the findings here are expected.

## ***Same-Sex Marriage***

### *Presidency*

Increasing perception of same-sex marriage as being an issue about rights leads to less acceptance of same-sex marriage decisions coming from the presidency, while increasing perception that the issue is about morals leads to more acceptance of policy in this area coming from the presidency. While these two designations may seem intertwined, it is entirely possible that respondents hold a belief that rights-based issues should be handled by one institution (here, perhaps, the Court), while also believing that issues believed to be, primarily, about morals could be handled by any institution. Further, this may be reflecting a short-term consideration. Respondents may hold a perception that the current president is a moral individual, or holds high morals, and, therefore, might assign an issue that is perceived to be based in morality to the presidency, as a result.

Additionally, increasing age is significantly and positively related to acceptance of same-sex marriage policy emanating from the presidency.

### *Congress*



The perception of same-sex marriage as being a rights issue predicts decreased acceptance of decisionmaking in the area coming from Congress. This might suggest that respondents perceive rights issues to be better handled elsewhere.

Demographically, women are less likely than men to support same-sex marriage decisions coming from Congress. This could be related to the fact that 62.70% of women in the survey view Congress as conservative, while 77.21% of the women hold a liberal position on same-sex marriage.

### *Supreme Court*

The increased belief that same-sex marriage is a moral or rights issue predicts decreased acceptance of same-sex marriage decisionmaking coming from the Court. This runs counter to my hypothesis and earlier findings. Given that the courts are often seen as protectors of rights, we might expect to find that when the courts make decisions on rights issues acceptance of those decisions is greater. Here, I do not find that. Again, though, this may have something to do with the policy positions of respondents running up against perceived policy that might come from the Court. Indeed, 75.33% of survey respondents support same-sex marriage, while only 21.84% perceive the Supreme Court to be liberal. Interestingly though, this finding about rights holds true for all three institutions on the issue of same-sex marriage.

Demographically, women are less likely than men to accept same-sex marriage decisions coming from the Supreme Court. This may be due to the fact that 77.21% of women hold a liberal position on same-sex marriage, while only 21.37% of women perceive the Court to be liberal.

For all respondents, increasing ideological distance predicts decreased acceptance of same-sex marriage policy emanating from the Supreme Court. Further, as we already know,

education influences acceptance of policy coming from the Court (see i.e., Gibson and Caldeira 1992; Benesh 2006); here, same-sex marriage policy is accepted at greater rates as education increases. And, increasing family income predicts decreased acceptance.

Taken together, these findings provide an array of differing predictive indicators of acceptance for each branch of government, overall highlighting the fact that our understanding of support and acceptance of decisions cannot be universally applied across all branches of government and across issues. Indeed, unique indicators influence acceptance for each branch of government and for policymakers to make policy that can enhance public acceptance, they must be aware of the valuable predictors for each branch of government. In fact, clear patterns emerge when it comes to acceptance of policies on each of the issues. On the issue of same-sex marriage, short-term legitimacy and perception that the issue is about rights predicts acceptance across all institution. On Guantanamo Bay, short-term legitimacy and perception that the issue is controversial predicts acceptance across all institutions. And, as it pertains to online sales taxation, short-term legitimacy matters across all institutions.

Institutionally, across all issues, short-term legitimacy predicts acceptance of policies coming from all three institutions. Additionally, the interaction between short-term legitimacy and preference also predicts acceptance of all policies coming from Congress. Essentially, the effect of short-term legitimacy on policy acceptance is differentially impacted for those who prefer Congress to make policy in each issue area than for those who do not. Finally, it bears repeating, that short-term considerations seem to matter to policy acceptance emanating from an institution much more so than do long-term institutional considerations.

## **CONCLUSION**

Public acceptance of policies is integral to governing. Democratic governments rely on acceptance and, thus, acquiescence to their policies in order to thrive. Without acceptance of policies, governments would fail. Within this context, then, it is important to understand what drives acceptance in order that policymakers can govern well. Here, indicators of acceptance for Guantanamo Bay, online sales taxation, and same-sex marriage policies were examined across all three branches of government – the presidency, Congress, and the Supreme Court.

Perhaps most interesting, institutional preference (rank) to make policy in certain issue areas seems to have very little influence on policy acceptance. Findings highlighted in the previous chapter reveal that respondents do have preferences about which branch of government should make certain types of policies. The authority that respondents believe that each institution has to make policy drives these preferences. I have suggested that these rankings, these preferences, should also influence policy acceptance. The findings here suggest that this may not be accurate. Preference matters inconsistently to policy acceptance across both branch and issue. While respondents do have clear preferences about which branch they would like to make certain types of policies, this does not translate to some consistent level of acceptance of those policies.

Further, when the findings on authority (see the previous chapter) are examined in tandem with the findings in this chapter on acceptance, another interesting relationship emerges. We see that most survey respondents assign the Supreme Court as having the most authority to make decisions on the issues of same-sex marriage and, accordingly, also accept same-sex marriage policy most when it emanates from the Supreme Court. Most respondents also assign Congress as having the most authority to make decisions on the issue of online sales taxation and the presidency as having the most authority to decide on the issue of Guantanamo Bay (just

barely ahead of the Supreme Court). Acceptance of decisions in these areas, however, is highest when it comes from the Supreme Court – for all three issues. These findings seem contradictory and, so, it becomes important to understand what factors into acceptance for each branch of government. Previous legitimacy research suggest that, to some degree, we should expect to find this – that the courts, experiencing high degrees of legitimacy should, thus, be able to legitimate that policy more so than the other branches (Mondak 1990). The reality is more complex than that, however. Certain institution- and issue-level characteristics also matter to acceptance, of which legitimacy is just one. But, extant legitimacy research has erred in its construct. Here, I have argued that, when it comes to legitimacy, specific (short-term) and diffuse (long-term) support matter in different ways. And, surprisingly, perhaps, short-term specific legitimacy matters much more to policy acceptance than does long-term diffuse legitimacy.

Indeed, legitimacy, long understood to be an imperative indicator of the ability of an institution to command acquiescence to its policies, is not a universal predictor of acceptance for specific policies coming from institutions. The models included two legitimacy indices – one short- and long-term. This clarifies the picture a bit, revealing that long-term legitimacy is rarely relevant to acceptance of policies. Short-term legitimacy, on the other hand, is a strong predictor of policy acceptance for all issues and all branches. The short-term legitimacy index consists of questions that tap into short-term sentiment for the institutions, thereby, suggesting that acceptance of policies hinges on short-term considerations (i.e. job approval, salience, etc.), more so than long-term institutional legitimacy. This is fascinating and informative for policymakers, as those interested in making good policy – policy that is met with high degrees of acceptance – should consider the current public perception of the institution to ensure policy acceptance.

On the other hand, there is no consistent pattern that emerges between issue categorization factors – moral, political, economic, social, or and rights – and policy acceptance across all institutions. So, despite theoretical suggestion that issue type may matter, there is no consistent significance between issue type and policy acceptance. Specifically, the assignment of online sales taxation as an economic issue did not influence respondent acceptance of such policy emanating from any particular institution. The same holds true for Guantanamo Bay – no significant relationships emerge. Interestingly, though, those respondents who view same-sex marriage as, primarily, a rights issue, are significantly less likely to accept same-sex marriage policy coming from any of the institutions. And, level of perceived controversy around the issue matters to all institution on just the issue of Guantanamo Bay, suggesting that this issue activates something unique that is not present for the other two issues examined here.

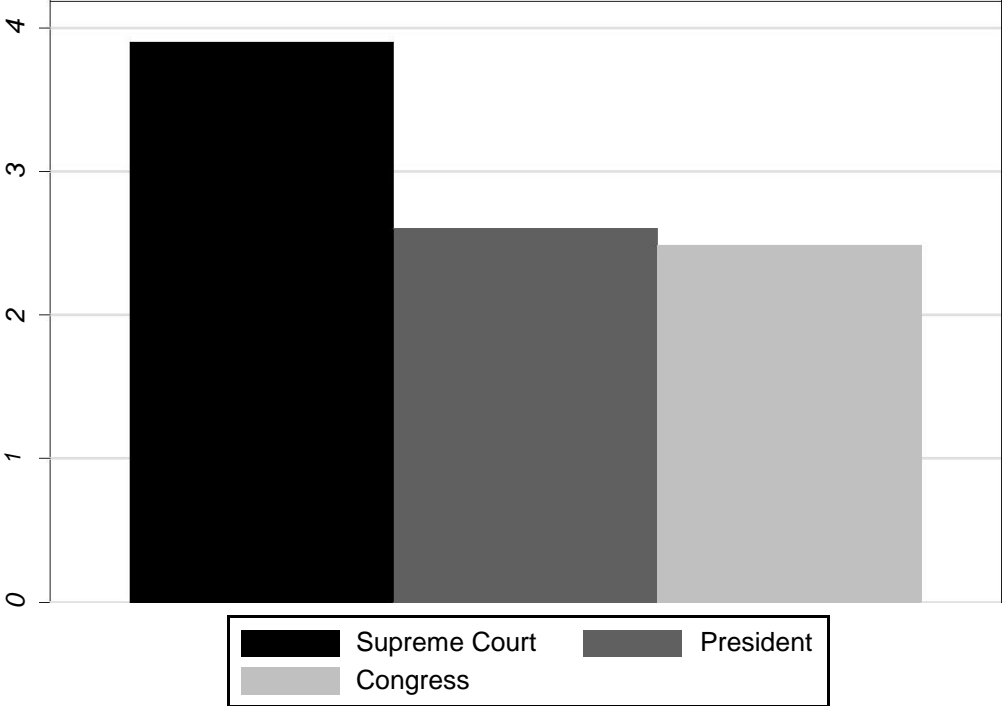
As it relates to some demographics, this research finds that females are less accepting of decisions coming from Congress and the Supreme Court on the issue of same-sex marriage, and from Congress on the issue of Guantanamo Bay. Asians are more accepting of decisions about Guantanamo Bay policy coming from the Supreme Court. Other than that, however, race does not seem to drive policy acceptance. Additionally, party identification and ideology have little influence on acceptance, with the exception of Republicans on acceptance for Guantanamo Bay policy coming from Congress, and conservatives on acceptance of Guantanamo Bay policy coming from the Supreme Court – both positive. The results here also help us to understand the influence of ideological distance on policy acceptance. Increasing ideological distance predicts less acceptance for same-sex marriage policy emanating from the Supreme Court, as well as Guantanamo Bay policy coming from the presidency and the Supreme Court. On demographics, while there is no clear story about what is happening here, this nuance is interesting and deserves

some further analysis to be helpful to policymakers. Indeed, parsing out the details about why certain groups of individuals might prefer certain branches of government to handle certain policy areas could prove to be very valuable, in the future. At minimum, the findings here highlight the fact that some unique differences do exist across demographics and this deserves further examination.

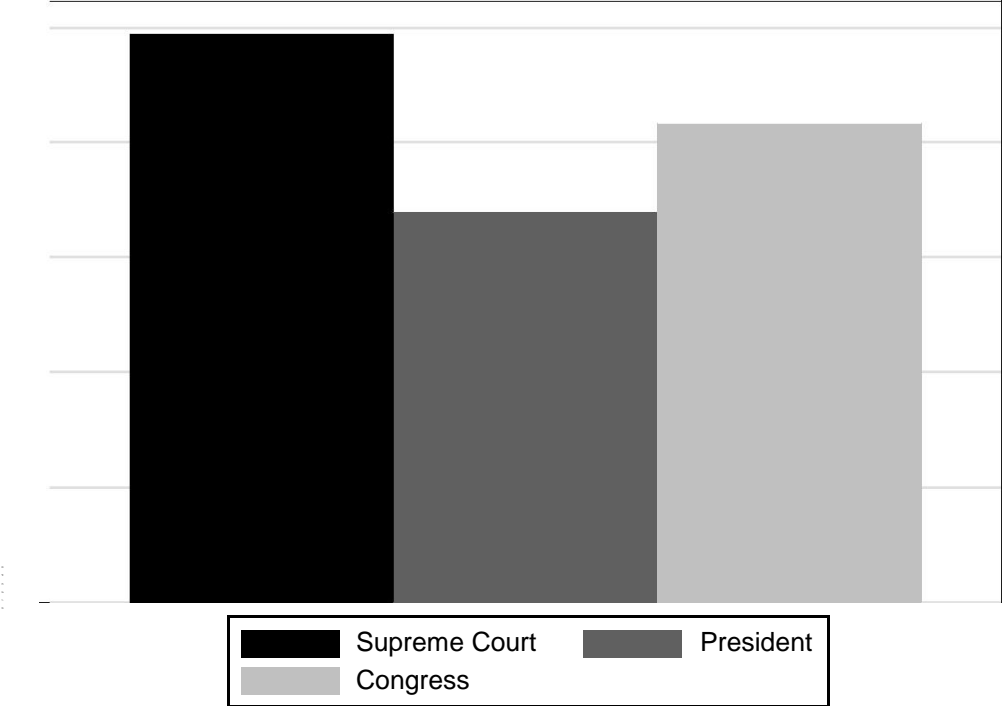
It is important to note, while digesting these results, that policy acceptance for decisions that run counter to respondent preference is relatively low for all institutions on all issues, suggesting that the influence of acceptance on compliance is understudied. The Supreme Court, however, garners the highest levels of acceptance when it makes policies that run counter to respondent preference (see Figures 9a, 9b, and 9c). This finding brings us full circle, though, suggesting that, perhaps, despite institutional legitimacy and institutional preference to make policy, the Supreme Court remains the institution most able to “legitimate” policies – foster acceptance for even unliked policies.

These findings help policymakers to understand which factors influence public acceptance of Guantanamo Bay, online taxation, and same-sex marriage policymaking and where it “should” come from. While future research is necessary to discern how these same variables influence acceptance in other areas of policy, as well as to further understand why certain variables matter for certain branches, these findings are a valuable first step, if only to establish the fact that the public does consider different factors for each branch of government when choosing to accept, or not accept, policy emanating from the branch.

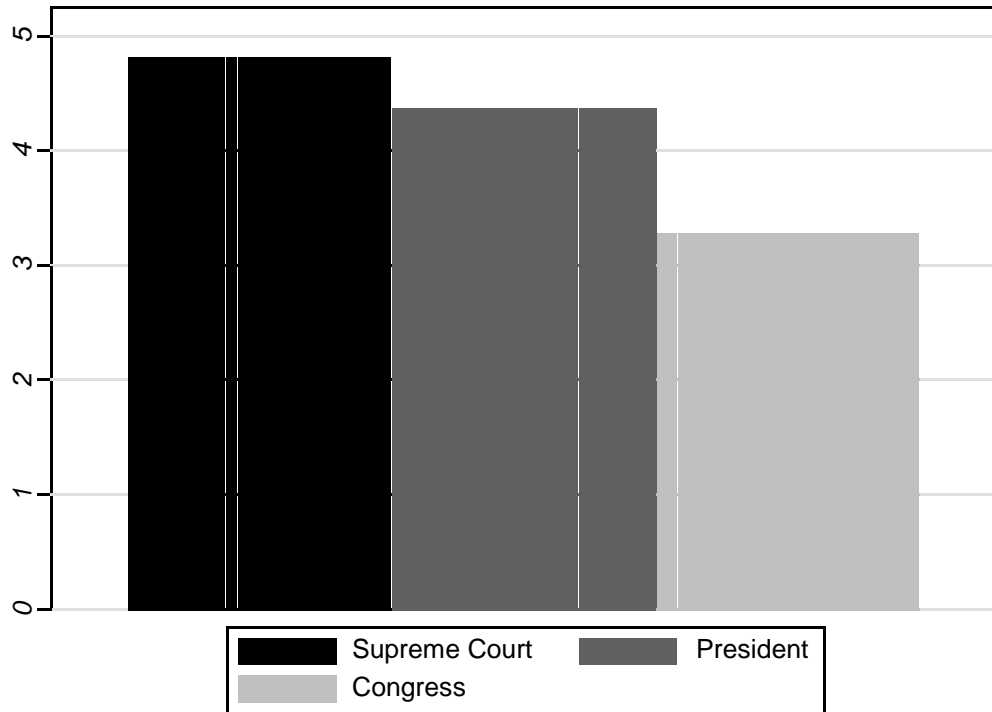
**Figure 8a: Acceptance of Decision on Same-Sex Marriage, All Branches (Mean)**



**Figure 8b: Acceptance of Decision on Online Taxation, All Branches (Mean)**



**Figure 8c: Acceptance of Decision on Guantanamo Bay, All Branches (Mean)**



**Table 18: Cronbach’s Alpha, Policy Acceptance Index<sup>72</sup>**

	Guantanamo Bay		Same-Sex Marriage		Online Sales Taxation	
	<i>Keep Open</i>	<i>Close</i>	<i>Marriage</i>	<i>No Marriage</i>	<i>Collect</i>	<i>Do Not Collect</i>
Presidency	0.6444	0.7445	0.8071	0.5775	0.7688	0.6821
Congress	0.6395	0.7448	0.7300	0.5785	0.6646	0.5971
Supreme Court	0.5705	0.6683	0.7445	0.5723	0.7191	0.4744

<sup>72</sup> Table 18 offers Cronbach’s Alpha scores for each index of policy acceptance, predicated on the policy outcome emanating from each of the institutions. Generally, the scores are acceptable; however, some scores that fall below about .6 suggest that the policy acceptance index may not be performing consistently well across institutions.



**Table 19: Policy Acceptance by Institution**<sup>73</sup>

	<b>Same-Sex Marriage</b>		<b>Guantanamo Bay</b>		<b>Online Sales Taxation</b>	
	<i>Support</i>	<i>Oppose</i>	<i>Keep Open</i>	<i>Close</i>	<i>Collect</i>	<i>Do Not Collect</i>
Presidency	18.80%	6.68%	23.95%	34.90%	8.19%	26.46%
Supreme Court	26.80%	21.56%	32.77%	50.84%	32.98%	64.81%
Congress	14.53%	6.42%	8.92%	32.14%	18.23%	34.98%

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<sup>73</sup> Table 19 reflects the percentage of respondents who have high levels of policy acceptance (a score of 6 or higher on a 12 point additive index scale) for the policy outcome that they received. Remember, these respondents all received outcomes that ran counter to a stated preference. While all institutions fare relatively poorly, the United States Supreme Court receives the highest levels of policy acceptance on each issue, regardless of the outcome.

**Table 20a: Acceptance of Policy Decision, Presidency<sup>74</sup>**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	PRESIDENCY		
	Guantanamo	Online Taxation	Same Sex Marriage
Long Term Legitimacy	-0.0594 (0.0943)	-0.1677 (0.1061)	<b>-0.2174**</b> <b>(0.0918)</b>
Short Term Legitimacy	<b>0.2425***</b> <b>(0.0424)</b>	<b>0.3340***</b> <b>(0.0440)</b>	<b>0.2407***</b> <b>(0.0391)</b>
Ranking	0.4086 (0.7601)	-0.4730 (1.1609)	<b>2.0599*</b> <b>(1.2349)</b>
LT Legitimacy*Rank	0.0183 (0.1145)	0.2932 (0.2088)	-0.0598 (0.1794)
ST Legitimacy*Rank	0.0542 (0.0679)	-0.0128 (0.1259)	-0.0902 (0.1102)
Government Support	-0.0039 (0.0324)	0.0010 (0.0358)	<b>0.0740**</b> <b>(0.0322)</b>
Female	0.0078 (0.1848)	0.0146 (0.2087)	0.0134 (0.1895)
Black	0.4368 (0.3598)	-0.1261 (0.3944)	0.4984 (0.4777)
Asian	0.1711 (0.3726)	-0.4600 (0.4135)	0.3230 (0.3659)
Hispanic	0.0860 (0.3947)	-0.2514 (0.5367)	0.3809 (0.4223)
Conservative	<b>0.8205***</b> <b>(0.3153)</b>	0.3393 (0.3842)	0.2454 (0.3461)
Republican	-0.2291 (0.3134)	0.2741 (0.3594)	0.3396 (0.3197)
Ideological Distance	<b>-0.2831**</b> <b>(0.1109)</b>	-0.0474 (0.1260)	0.0055 (0.1139)
Education	-0.0695 (0.0584)	0.0503 (0.0647)	-0.0402 (0.0604)
Age	0.0143 (0.0599)	<b>-0.2022***</b> <b>(0.0719)</b>	<b>0.1109*</b> <b>(0.0624)</b>
Family Income	-0.0312 (0.0291)	-0.0259 (0.0324)	-0.0037 (0.0307)
Attention to News	-0.0178 (0.0464)	<b>-0.1179**</b> <b>(0.0560)</b>	-0.0117 (0.0502)
Controversial Issue	<b>-0.2375*</b> <b>(0.1258)</b>	-0.1199 (0.1342)	-0.0379 (0.1155)
Moral Issue	-0.0798 (0.3818)	0.6653 (2.1389)	<b>0.5509**</b> <b>(0.2853)</b>
Political Issue	0.5012 (0.3433)	-0.6910 (0.7244)	-0.2093 (0.5102)
Economic Issue	0.8998 (0.9832)	-0.7058 (0.6051)	-0.9125 (1.4042)
Rights Issue	-0.0478 (0.3449)	-0.4574 (0.9686)	<b>-0.6957***</b> <b>(0.2309)</b>
N=	470	416	457
Adjusted R <sup>2</sup>	0.2641	0.2354	0.1576

<sup>74</sup> Tables 20a, 20b, and 20c all highlight regression analysis, in which the dependent variable of policy acceptance (an additive index of commonly used questions) is modeled on the three issues. The most consistent finding is that short-term legitimacy predicts policy acceptance for all issues and all institutions.

**Table 20b: Acceptance of Policy Decision, Congress**

\*p<.1; \*\*p<.05; \*\*\*p<.01

	CONGRESS		
	Guantanamo	Online Taxation	Same Sex Marriage
Long Term Legitimacy	<b>-0.2459**</b> <b>(0.0980)</b>	<b>-0.3360***</b> <b>(0.1224)</b>	0.0874 (0.0869)
Short Term Legitimacy	<b>0.3889***</b> <b>(0.0559)</b>	<b>0.3465***</b> <b>(0.0814)</b>	<b>0.2145***</b> <b>(0.0487)</b>
Ranking	<b>1.7110*</b> <b>(0.9934)</b>	0.0928 (0.7146)	0.1211 (0.7529)
LT Legitimacy*Rank	-0.0066 (0.1736)	<b>0.2095*</b> <b>(0.1189)</b>	-0.1099 (0.1154)
ST Legitimacy*Rank	<b>-0.3085**</b> <b>(0.1352)</b>	<b>-0.1805*</b> <b>(0.1031)</b>	<b>0.2156**</b> <b>(0.1051)</b>
Government Support	<b>0.0800*</b> <b>(0.0415)</b>	<b>0.1310***</b> <b>(0.0483)</b>	0.0127 (0.0376)
Female	<b>-0.4802**</b> <b>(0.2250)</b>	0.2393 (0.2611)	<b>-0.3837**</b> <b>(0.1932)</b>
Black	0.3467 (0.4728)	-0.2311 (0.4955)	0.5156 (0.3532)
Asian	-0.0292 (0.4256)	0.3734 (0.5144)	0.5373 (0.3888)
Hispanic	-0.2544 (0.5250)	-0.4620 (0.7144)	-0.2455 (0.4169)
Conservative	0.4838 (0.3979)	-0.3494 (0.4166)	0.1050 (0.3635)
Republican	<b>1.1803***</b> <b>(0.3977)</b>	0.6573 (0.4399)	-0.1810 (0.3599)
Ideological Distance	-0.0440 (0.1105)	-0.2109 (0.1314)	-0.0397 (0.1002)
Education	-0.0967 (0.0700)	0.0613 (0.0829)	-0.0186 (0.0630)
Age	0.0447 (0.0771)	-0.0570 (0.0818)	-0.0036 (0.0691)
Family Income	<b>0.0901**</b> <b>(0.0364)</b>	0.0037 (0.0412)	0.0338 (0.0323)
Attention to News	<b>-0.1036*</b> <b>(0.0615)</b>	-0.0106 (0.0668)	-0.0165 (0.0492)
Controversial Issue	<b>-0.3718**</b> <b>(0.1667)</b>	-0.2263 (0.1740)	0.1168 (0.1130)
Moral Issue	-0.6374 (0.4789)	0.4601 (1.5958)	-0.1718 (0.2999)
Political Issue	-0.0229 (0.4527)	0.0376 (1.3773)	-0.0565 (0.5556)
Economic Issue	0.8627 (1.2152)	0.2889 (1.2867)	-0.3419 (0.8925)
Rights Issue	-0.6873 (0.4440)	-0.4932 (1.4236)	<b>-0.9068***</b> <b>(0.2478)</b>
N=	440	315	430
Adjusted R <sup>2</sup>	0.2024	0.1115	0.1607

**Table 20c: Acceptance of Policy Decision, Supreme Court**  
 \*p<.1; \*\*p<.05; \*\*\*p<.01

	SUPREME COURT		
	Guantanamo	Online Taxation	Same Sex Marriage
Long Term Legitimacy	0.1212 (0.0878)	0.0345 (0.1126)	0.0705 (0.1098)
Short Term Legitimacy	<b>0.2445***</b> <b>(0.0609)</b>	<b>0.3044***</b> <b>(0.0644)</b>	<b>0.2857***</b> <b>(0.0714)</b>
Ranking	<b>1.3649**</b> <b>(0.6168)</b>	<b>1.6363*</b> <b>(0.8730)</b>	0.8196 (0.6711)
LT Legitimacy*Rank	-0.1437 (0.0881)	-0.1676 (0.1176)	-0.0337 (0.1040)
ST Legitimacy*Rank	0.0069 (0.0819)	-0.0182 (0.1086)	0.0008 (0.0904)
Government Support	0.0009 (0.0319)	0.0294 (0.0409)	-0.0149 (0.0387)
Female	-0.1592 (0.1818)	0.2846 (0.2414)	<b>-0.5146**</b> <b>(0.2080)</b>
Black	0.2922 (0.3150)	0.4853 (0.4835)	-0.4206 (0.3840)
Asian	<b>0.8834**</b> <b>(0.3674)</b>	0.2525 (0.4886)	-0.1638 (0.4516)
Hispanic	0.5877 (0.4074)	-0.4839 (0.4709)	-0.6707 (0.5263)
Conservative	<b>0.5320*</b> <b>(0.3027)</b>	-0.3747 (0.3820)	0.4549 (0.3243)
Republican	-0.0819 (0.3379)	0.0779 (0.4136)	0.2053 (0.3383)
Ideological Distance	<b>-0.1542*</b> <b>(0.0831)</b>	0.1373 (0.1128)	<b>-0.2504***</b> <b>(0.0957)</b>
Education	0.0320 (0.0567)	<b>0.1440*</b> <b>(0.0789)</b>	<b>0.1562**</b> <b>(0.0654)</b>
Age	0.0694 (0.0573)	-0.1229 (0.0822)	0.0835 (0.0651)
Family Income	-0.0007 (0.0275)	-0.0031 (0.0393)	<b>-0.0625**</b> <b>(0.0313)</b>
Attention to News	<b>-0.1048**</b> <b>(0.0460)</b>	-0.0177 (0.0606)	-0.0186 (0.0516)
Controversial Issue	<b>-0.4441***</b> <b>(0.1175)</b>	-0.2089 (0.1423)	-0.1176 (0.1306)
Moral Issue	-0.3552 (0.4125)	1.2301 (1.0677)	<b>-0.6230**</b> <b>(0.2865)</b>
Political Issue	<b>-0.8053**</b> <b>(0.3961)</b>	0.3388 (0.8216)	-0.4728 (0.5812)
Economic Issue	-0.9785 (1.8891)	0.4904 (0.7018)	2.9202 (2.1335)
Rights Issue	<b>-0.6702*</b> <b>(0.3828)</b>	-0.0163 (0.9037)	<b>-0.5501**</b> <b>(0.2401)</b>
N=	464	401	473
Adjusted R <sup>2</sup>	0.1982	0.1347	0.1926

Figure 2a: Predicted Levels of Acceptance for Congress Policy on Online Sales Tax  
by Long Term Legitimacy and First Rank

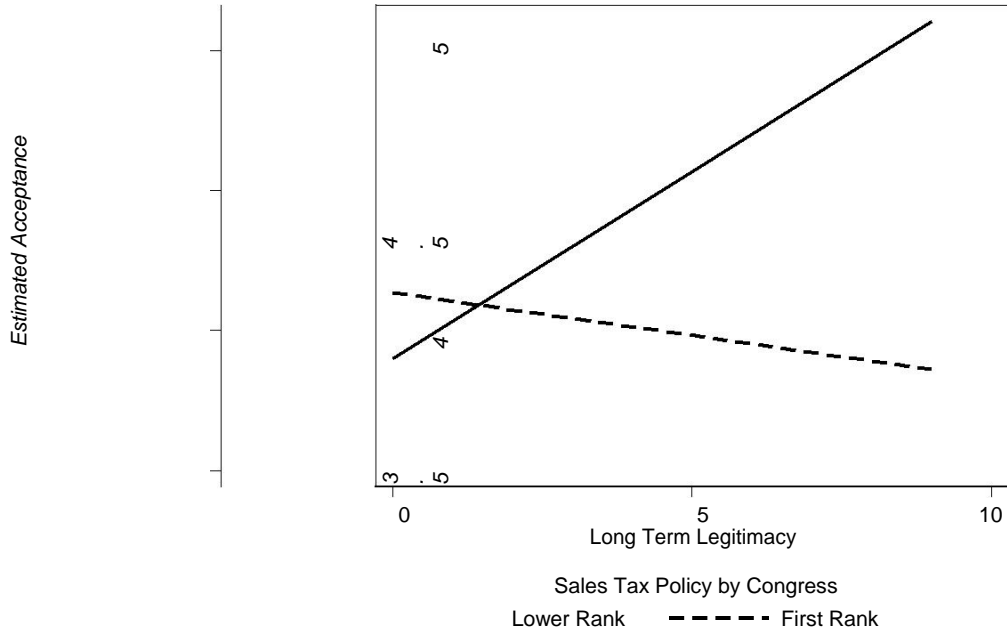


Figure 2b: Predicted Levels of Acceptance for Congress Policy on Same Sex Marriage  
by Short Term Legitimacy and First Rank

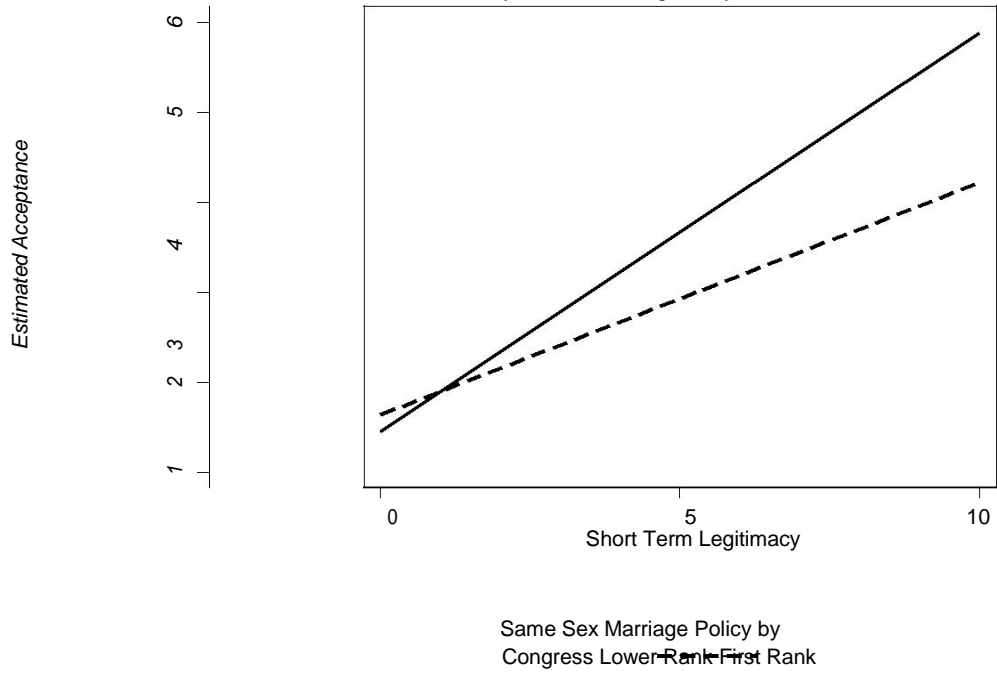


Figure 2c: Predicted Levels of Acceptance for Congress Policy on Guantanamo Bay  
by Short Term Legitimacy and First Rank

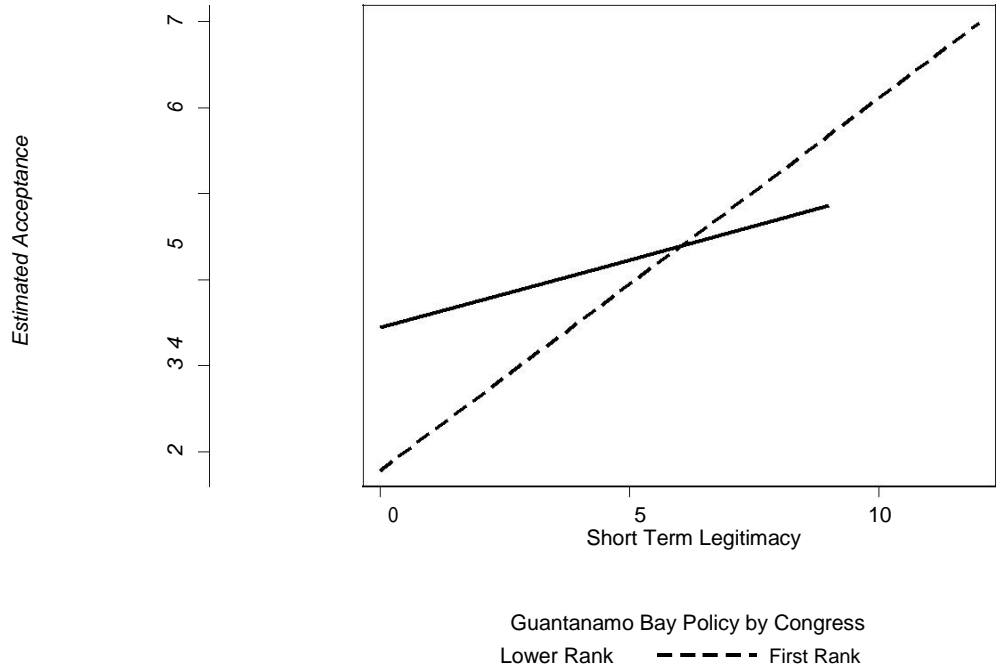
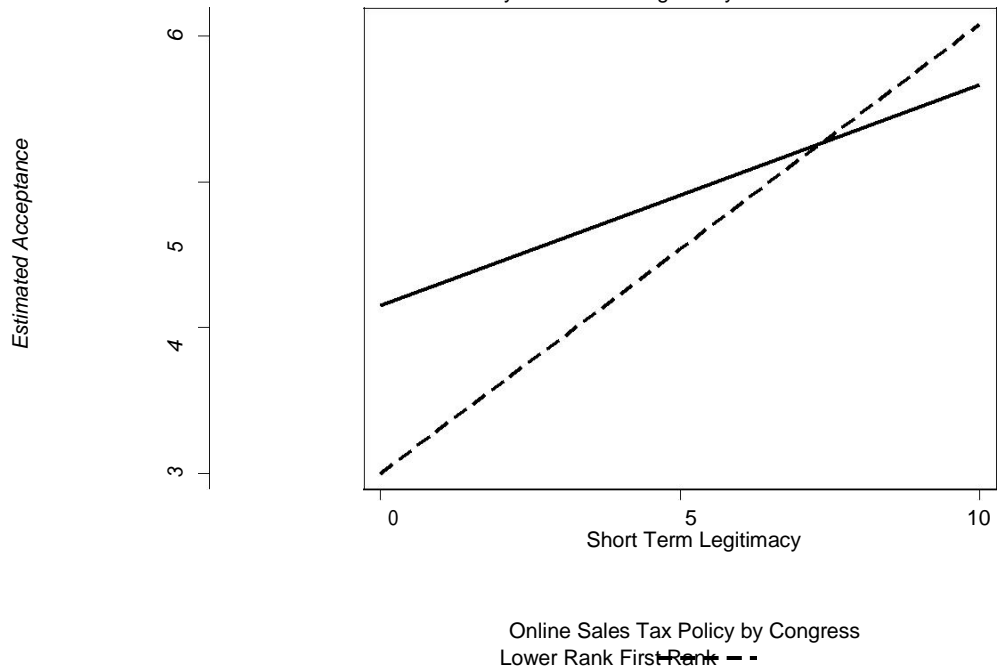


Figure 2d: Predicted Levels of Acceptance for Congress Policy on Online Sales Tax  
by Short Term Legitimacy and First Rank





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## CHAPTER VI

### CONCLUSION

Researchers have come to believe that highly legitimate institutions can legitimate their policies more so than institutions with low legitimacy. This ability to legitimate policy is considered to be critical to legitimate governance – that legitimate policy garners acquiescence and compliance. In essence, highly legitimate institutions can foster acceptance of their policies. If this is the case, then it becomes important to understand what matters to legitimacy, how the public prefers institutions to make policy in certain areas, and how this legitimacy and preference influence acceptance, if at all. More so, it is incredibly important that measurement of these concepts is truly tapping into the sentiment that we expect that they are. It is not enough to argue that legitimacy, or high preference to make policy in certain areas, can enhance policy acceptance. Indeed, we must be confident that our measures of these concepts are adequate and accurate. If they are not, then our understanding of policy acceptance and, thus, our ability to manipulate this acceptance, is badly harmed.

This dissertation project has examined institutional legitimacy and institutional preference to make policy on three particular issues – online sales taxation, same-sex marriage, and continued operation of Guantanamo Bay – in pursuit of understanding these variables influence policy acceptance. In essence, the general argument posited here was that people have preferences about which branch of government makes certain types of policies and that these preferences influence acceptance of those policies. In pursuit of answering these questions, the traditionally-used legitimacy index has been thoroughly examined, deconstructed, and an argument is offered that our understanding of legitimacy, and how it is measured, is flawed. A more adequate measure has been developed and utilized in the analysis here. Further,

institutional preference to make policy on certain issues was examined, and it was found that both institutional legitimacy and authority to make decisions on certain issues drives how and why respondents rank, or prefer, each institution – Congress, the presidency, and the Supreme Court - in a particular way to handle each of the three issues studied here. Specifically, the findings show that respondents do, indeed, have preference about which institution makes which types of policies. Finally, relying on these findings, policy acceptance of the three issue areas was examined, taking a closer look at the influence of institutional legitimacy and preference on such acceptance. Here, it became clear that, despite having preferences for specific institutions to make certain policies, acceptance of those policies is not consistently linked to that preference. In fact, the greatest predictor of policy acceptance is short-term institutional legitimacy.

### **Legitimacy**

Extant institutional legitimacy literature has focused almost entirely on the judicial branch of American government. Given that the courts have been viewed as such strong policy legitimators, specifically because of their high public approval (Hibbing and Theiss-Morse 2002), it stands to reason that this may also be an important indicator of the legitimation capacity of the other policymaking branches of government – Congress and the presidency. As such, our understanding of how legitimacy matters to each branch of government and, further, how legitimacy influences acceptance of policies coming from each of the institutions, needs to be clear and accurate, if we are to posit any relevant prediction about policy acceptance.

This project has, thus, applied the traditional legitimacy index to all three branches of government, finding that, largely, the same indicators that matter to the courts also matter to the other branches of government. In essence, general institutional legitimacy is driven by the same things. Here, it was found that the perception that the institution fulfills its role and perception

that the institution uses fair procedures matters to legitimacy for all branches of government. These are theoretically supported (see Chapter II) and, therefore, these findings are not particularly surprising. In addition, respondent happiness with federal laws also matters to institutional legitimacy for all institutions. This is less supported, but may be due to respondent knowledge. If so, this would fit with extant literature about judicial legitimacy. Beyond these findings, there is little consistency across branches, but the general outcome supports the idea that institutional legitimacy, as it has been measured, can be applied to all branches of government with results that support the idea that legitimacy, as a concept, is driven by similar variables.

The research here moves beyond this application of the traditional measure, however, and examines the index of questions, arguing that the measure, as it has been utilized, is flawed and, therefore, an inadequate measure of true institutional legitimacy. Indeed, institutional legitimacy is a long-term sentiment associated with an institution that is removed from its inhabitants and its outcomes. As such, in pursuit of such a measurement, it is imperative that all variables included in the index act as an additive component to the whole. Emerging research (Weinschenk, Fettig, and Benesh 2012) suggests that measures of trust, along with confidence, may be inadequate measures of legitimacy. At minimum, they are theoretically unsound, given the difference of understanding and application of trust in American political research. Here, each variable in the index was examined for its contribution to the index and it was determined that, indeed, variables measuring trust, confidence, perception of the influence of politics, and perception that the institution favors some groups, or people, over others are all more closely related to short-term sentiments about an institution, while willingness to do away with, and makes

structural/constitutional changes to, an institution are more likely tapping into long-term sentiment for an institution.

These findings strike a fatal blow to the traditional measure of legitimacy, instead offering a new, more accurate, index that truly taps into only long-term sentiment. This more closely comports with the theoretical conceptualization of legitimacy and, therefore, also tells us much more about what influences legitimacy and how legitimacy might influence policy acceptance – the goal of this project. To more fully understand the influence of both long- and short-term legitimacy on policy acceptance, separate indices – one capturing each – was utilized in all relevant models in subsequent chapters.

### **Institutional Preference**

Poll data suggests that the public may believe that certain branches of government are better designed, or situated, to make policy in certain issue areas (see, i.e., Chapter I for some examples). When asked, on certain issues, survey respondents have stated a preference for one institution over another to make decision and policy on those issues. In essence, it appears that members of the American public do deem some issues to be more or less “legislative,” “judicial,” or “executive.” The argument being made here is that this designation influences the suitedness of an institution to make policy in a given issue area, which can, in turn, affect the evaluation and acceptance of that policy. Respondents were asked to rank each institution as to which is best-suited to make policy about each of the three issues. Institutional authority to make decisions in each policy area is the one consistent, and significant, predictor of a high ranking to make policy on each issue. For each institution, and on each issue, increased assigned authority to make policy in an issue area positively drives a high ranking to make policy in that

issue area. This bolsters our understanding that perceived authority to operate within some policy arena has a dramatic impact on suitedness to make policy.

Further, institutional legitimacy matters, but in difference ways across each issue. Short-term legitimacy significantly predicts a high ranking for an institution to make policy on the issues of same-sex marriage and Guantanamo Bay, but not online sales taxation. Long-term legitimacy, on the other hand, reveals a vastly different influence on preference. Increased long-term legitimacy in an institution predicts a lower ranking on the issues of same-sex marriage and online sales taxation. These findings suggest that 1) preference of institutions to make policy in certain issue areas may be linked to the current environment and an institution's current inhabitants, and 2) long-term legitimacy may actually act as a drag on suitedness of an institution to make policy in certain issue areas. These findings reveal a dramatic schism between short-and long-term legitimacy. And, if institutional legitimacy does, indeed, enhance policy acceptance (see Chapter II for a discussion about this), then the phenomenon uncovered here must be further examined if we are to understand legitimacy, preference, and policy acceptance.

### **Acceptance**

All three branches of government have some policymaking capacity in almost any issue area. Here, respondents were presented with numerous policy outcomes, emanating from each of the institutions, on three issues. In fact, each of the branches has weighed in on the three issues presented here – online sales taxation, same-sex marriage, Guantanamo Bay – making the possible outcome options both relevant and believable.

This project argues that individuals have preferences about which branch of government handles which types of policies and that these preferences drive policy acceptance. As mentioned earlier, the findings here are mixed. It appears that people do have preferences about

which branch makes policy in certain issue areas – most respondents prefer Congress most to make policy on online sales taxation and the Supreme Court to make policy on same-sex marriage and Guantanamo Bay – but, acceptance of those policies is not driven by these preferences. Instead, the findings here reveal that policy acceptance is driven, almost exclusively, by short-term institutional legitimacy.

Long-term legitimacy has a lesser impact on policy acceptance, and preference has no consistent significant influence on policy acceptance. While the findings related to preference are surprising, they are not entirely unbelievable. Indeed, it is acceptable that people may have preferences about which branch of government makes policy on certain issues, but that they would still accept outcomes from another branch. The question, then, becomes, what does influence acceptance? And, here by disaggregating the traditional institutional legitimacy index, and reconstructing it into two separate indices – one long- and one short-term – a heretofore hidden influence was revealed. Short-term legitimacy is the only variable that universally predicts policy acceptance for all policies coming from all three branches.

This has immense policymaking implications. While we have come to believe that long-term legitimacy is necessary to policy legitimation (see Chapter II for a discussion of this), it would appear that this is not so. Instead, short-term evaluations of an institution drive policy acceptance. The American public seems to hang acceptance of public policies on short-term evaluations of an institution and, perhaps, its inhabitants. As such, it is imperative that policymakers not only be aware of their own levels of public esteem, but that these same policymakers take care to nurture that esteem if they want to enhance policy acceptance. And, this is important, because policy acceptance is linked to compliance (see Chapter II), and compliance is necessary to a healthy democracy. These findings underscore the importance of

responsible governance. It would appear that policies are accepted, not on their merit alone, but contingent on short-term factors related to the institutions and policymakers crafting them.



## APPENDIX

### SURVEY INSTRUMENT

#### PART A

In a typical week, how many days do you pay attention to national or local news about politics?

- 0=1 day
- 1=2 days
- 2=3 days
- 3=4 days
- 4=5 days
- 5=6 days
- 6=7 days

When you think about the federal government, generally speaking how happy are you with federal laws?

- 0=Very Unhappy
- 1=Unhappy
- 2=Somewhat Unhappy
- 3=Somewhat Happy
- 4=Happy
- 5=Very Happy

When it comes to the state you live in, generally speaking how happy are you with your state laws?

- 0=Very Unhappy
- 1=Unhappy
- 2=Somewhat Unhappy
- 3=Somewhat Happy
- 4=Happy
- 5=Very Happy

Same-sex marriage should be recognized as a legitimate and legal institution by the United States government.

- 0=Disagree Strongly
- 1=Disagree Somewhat
- 2=Agree Somewhat
- 3=Agree Strongly

Businesses that sell items online should be required to collect the purchaser's state and local sales tax.

0=Disagree Strongly  
1=Disagree Somewhat  
2=Agree Somewhat  
3=Agree Strongly

The United States government should continue to detain prisoners without trial offshore at the Guantanamo Bay Detention Facility.

0=Disagree Strongly  
1=Disagree Somewhat  
2=Agree Somewhat  
3=Agree Strongly

## PART B

### VIGNETTES

#### *Guantanamo Bay*

The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the **President of the United States** issued an executive order **ensuring the continued use of the Guantanamo Bay Detention Facility to hold and interrogate prisoners offshore.**

The President made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the President's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the President's office.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose **Congress** passed legislation, by a veto-proof margin, **requiring that the Guantanamo Bay Detention Facility stay in operation and continue to accept and hold prisoners for interrogation offshore.**

Congress made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Congress' decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge Congress' decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of Congress.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose the **United States Supreme Court**, which sits in Washington, D.C., heard a case challenging the constitutionality of the United States government's practice of holding prisoners offshore indefinitely without trial. The Supreme Court then issued a ruling upholding the constitutionality of the facility's use, thereby **ensuring that the Guantanamo Bay Detention Facility continue to accept and hold prisoners for interrogation offshore.**

The Supreme Court made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The Supreme Court's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the Supreme Court's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the Supreme Court.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the **President of the United States** issued an executive order to **close the Guantanamo Bay Detention Facility and transfer all of its prisoners to super-max prisons on the United States mainland** by August 1, 2013.

The President made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the President's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the President's office.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose **Congress** passed legislation, by a veto-proof margin, **requiring the closure of the Guantanamo Bay Detention Facility and the transfer of all of its prisoners to super-max prisons on the United States mainland** by August 1, 2013.

Congress made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Congress' decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge Congress' decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of Congress.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose the **United States Supreme Court**, which sits in Washington, D.C., heard a case challenging the constitutionality of the United States government's practice of holding prisoners offshore indefinitely without trial. The Supreme Court then issued a ruling **ordering the closing of the Guantanamo Bay Detention Facility and the transfer of its prisoners to super-max prisons on the United States mainland** by August 1, 2013.

The Supreme Court made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The Supreme Court's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the Supreme Court's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the Supreme Court.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

*Same-Sex Marriage*

The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the **President of the United States** issued an executive order **requiring all federal agencies to provide same-sex marriage benefits to all federal employees** equal to those provided to opposite-sex married couples, to begin August 1, 2013.

The President made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the President's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the President's office.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose **Congress** passed a law, by a veto-proof margin, **recognizing same-sex marriage as a legal institution in the United States**.

Congress made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Congress' decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge Congress' decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of Congress.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose the **United States Supreme Court**, which sits in Washington, D.C., heard a case challenging the federal Defense of Marriage Act, which limits marriage to relationships between one man and one woman. The Supreme Court subsequently issued a ruling that the Defense of Marriage Act discriminates against same-sex couples and **established a federal right to marry for same-sex couples in the United States**.

The Supreme Court made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree



The Supreme Court's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the Supreme Court's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the Supreme Court.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the President issued an executive order that same-sex couples working for the federal government **are not to receive federal marriage benefits** equal to those benefits offered to opposite-sex couples.

The President made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President's decision ought to be the final decision on the matter

0=Strongly Disagree  
1=Disagree  
2=Agree  
3=Strongly Agree

I would encourage groups with opposing views to challenge the President's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the President's office.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose **Congress** passed a law, by a veto-proof margin, that went further than the federal Defense of Marriage Act, which defines marriage as an institution between one man and one woman, **explicitly outlawing same-sex marriage in the United States.**

Congress made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Congress' decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge Congress' decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of Congress.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose a case was presented to the **United States Supreme Court**, which sits in Washington, D.C., by a same-sex couple, challenging the federal Defense of Marriage Act, which defines marriage as an institution between one man and one woman. After hearing arguments, the Supreme Court rendered a decision supporting the constitutionality of the Defense of Marriage Act, affirming that **same-sex marriage is not required to be federally recognized**.

The Supreme Court made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The Supreme Court's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the Supreme Court's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the Supreme Court.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

### *Online Sales Taxation*

The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the **President of the United States** issued an executive order **requiring all online businesses conducting transactions to collect state and local sales taxes**, just like physical stores in your community must, beginning August 1, 2013.

The President made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the President's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the President's office.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose **Congress** passed a bill, by a veto-proof margin, that **required all online businesses conducting transactions to collect state and local sales taxes**, just like physical stores in your community must, beginning August 1, 2013.

Congress made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Congress' decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge Congress' decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of Congress.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose the **United States Supreme Court**, which sits in Washington, D.C., heard a case alleging that treating online businesses differently from physical stores in your community violates the Constitution. The Supreme Court subsequently ruled that online businesses conducting transactions **must collect state and local sales taxes**, just as physical businesses in your community must, beginning August 1, 2013.

The Supreme Court made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The Supreme Court's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the Supreme Court's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the Supreme Court.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President of the United States has the ability to issue executive orders in certain circumstances that have the force of law. Keeping this in mind, consider the following situation. After the other institutions failed to act, suppose the **President of the United States** issued an executive order **exempting online businesses from collecting state and local sales taxes** in the same way that physical businesses in your community must.

The President made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The President's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the President's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the President's office.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose **Congress** passed legislation, by a veto-proof margin, that **exempted online businesses from collecting state and local taxes** in the same way that physical businesses in your community must.

Congress made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Congress' decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge Congress' decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of Congress.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Consider the following situation. After the other institutions failed to act, suppose the **United States Supreme Court**, which sits in Washington, D.C., heard a case alleging that treating online businesses differently from physical stores in your community violates the Constitution. The Supreme Court subsequently ruled that businesses are **not constitutionally required to collect state and local taxes and could not be compelled to do so** in the same way that physical stores in your community must.

The Supreme Court made the right decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The Supreme Court's decision ought to be the final decision on the matter.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

I would encourage groups with opposing views to challenge the Supreme Court's decision.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Issues like this ought to be kept out of the Supreme Court.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

### PART C

By clicking on each institution and moving it into position, please rank the following institutions from the one that is the **best suited** to make decisions about *same-sex marriage* (ranked 1 at the top) to the one that is the **least suited** to make decisions about *same-sex marriage* (ranked 3 at the bottom).

0=Ranked Congress First  
1=Ranked Congress Second  
2=Ranked Congress Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is the **best suited** to make decisions about *same-sex marriage* (ranked 1 at the top) to the one that is the **least suited** to make decisions about *same-sex marriage* (ranked 3 at the bottom).

0=Ranked Supreme Court First  
1=Ranked Supreme Court Second  
2=Ranked Supreme Court Third



By clicking on each institution and moving it into position, please rank the following institutions from the one that is the **best suited** to make decisions about *same-sex marriage* (ranked 1 at the top) to the one that is the **least suited** to make decisions about *same-sex marriage* (ranked 3 at the bottom).

0=President Ranked First  
1=President Ranked Second  
2=President Ranked Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is **best suited** to make decisions about the *online sales tax* (ranked 1 at the top) to the one that is **least suited** to make decisions about the *online sales tax* (ranked 3 at the bottom).

0=Ranked Congress First  
1=Ranked Congress Second  
3=Ranked Congress Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is **best suited** to make decisions about the *online sales tax* (ranked 1 at the top) to the one that is **least suited** to make decisions about the *online sales tax* (ranked 3 at the bottom).

0=Ranked Supreme Court First  
1=Ranked Supreme Court Second  
2=Ranked Supreme Court Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is **best suited** to make decisions about the *online sales tax* (ranked 1 at the top) to the one that is **least suited** to make decisions about the *online sales tax* (ranked 3 at the bottom).

0=President Ranked First  
1=President Ranked Second  
2=President Ranked Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is **best suited** to make decisions about the *Guantanamo Bay Detention Facility* (ranked 1 at the top) to the one that is **least suited** to make decisions about the *Guantanamo Bay Detention Facility* (ranked 3 at the bottom).

0=Ranked Congress First  
1=Ranked Congress Second  
3=Ranked Congress Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is **best suited** to make decisions about the *Guantanamo Bay Detention Facility* (ranked 1 at the top) to the one that is **least suited** to make decisions about the *Guantanamo Bay Detention Facility* (ranked 3 at the bottom).

- 0=Ranked Supreme Court First
- 1=Ranked Supreme Court Second
- 2=Ranked Supreme Court Third

By clicking on each institution and moving it into position, please rank the following institutions from the one that is **best suited** to make decisions about the *Guantanamo Bay Detention Facility* (ranked 1 at the top) to the one that is **least suited** to make decisions about the *Guantanamo Bay Detention Facility* (ranked 3 at the bottom).

- 0=President Ranked First
- 1=President Ranked Second
- 2=President Ranked Third

Overall, how much confidence would you say you have in the **United States Supreme Court**?

- 0=No confidence at all
- 1=Only a little confidence
- 2=Some confidence
- 3=A great deal of confidence

Overall, how much confidence would you say you have in **Congress**?

- 0=No confidence at all
- 1=Only a little confidence
- 2=Some confidence
- 3=A great deal of confidence

Overall, how much confidence would you say you have in the **President of the United States**?

- 0=No confidence at all
- 1=Only a little confidence
- 2=Some confidence
- 3=A great deal of confidence

What is your perception of the ideological makeup of the **United States Supreme Court**, which sits in Washington, D.C.? Is it:

0=Strongly Conservative  
1=Moderately  
Conservative 2=Evenly  
Balanced 3=Moderately  
Liberal 4=Strongly Liberal

What is your perception of the ideological makeup of the **United States House of Representatives**? Is it:

0=Strongly Conservative  
1=Moderately  
Conservative 2=Evenly  
Balanced 3=Moderately  
Liberal 4=Strongly Liberal

What is your perception of the partisan makeup of the **United States Senate**? Is it:

0=Strongly Conservative  
1=Moderately  
Conservative 2=Evenly  
Balanced 3=Moderately  
Liberal 4=Strongly Liberal

What is your perception of the ideological inclinations of the **President of the United States**? Is he:

0=Strongly Conservative  
1=Moderately  
Conservative 2=Evenly  
Balanced 3=Moderately  
Liberal 4=Strongly Liberal

Overall, how much trust would you say you have in the **United States Supreme Court**, which sits in Washington, D.C., to make decisions that are right for the country?

0=No trust at all  
1=Only a little  
trust 2=Some Trust  
3=A great deal of trust

Overall, how much trust would you say you have in the **President of the United States** to make decisions that are right for the country?

- 0=No trust at all
- 1=Only a little trust
- 2=Some Trust
- 3=A great deal of trust

Overall, how much trust would you say you have in **Congress** to make decisions that are right for the country?

- 0=No trust at all
- 1=Only a little trust
- 2=Some Trust
- 3=A great deal of trust

Do you happen to recall which of the following institutions made the policy regarding the Guantanamo Bay Detention Facility's operation in this survey? Was it:

- 0=Congress
- 1=The President of the United States
- 2=The United State Supreme Court
- 3=Don't Recall

Do you happen to recall which of the following institutions made the policy regarding same-sex marriage in this survey? Was it:

- 0=Congress
- 1=The President of the United States
- 2=The United State Supreme Court
- 3=Don't Recall

Do you happen to recall which of the following institutions made the policy regarding online sales taxation in this survey? Was it:

- 0=Congress
- 1=The President of the United States
- 2=The United State Supreme Court
- 3=Don't Recall

The **United States Supreme Court** gets too mixed up in politics.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The decisions made by the **United States Supreme Court** favor some groups more than others.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It would make no difference to me if the United States Constitution were rewritten to eliminate lifetime appointments of Supreme Court Justices, limiting their terms to 20 years.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It would make no difference to me if the United States Constitution were rewritten to provide for the election of Supreme Court Justices by the people, rather than appointment by the President.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

If the **United States Supreme Court** started making decisions that most people disagree with, it might be better to do away with the United States Supreme Court altogether.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

**Members of Congress** put the interests of their party over the interests of the American people.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The decisions made by **Congress** favor some groups more than others.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It would make no difference to me if the United States Constitution were rewritten to reduce **Congress'** power to approve or deny presidential appointments.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It would make no difference to me if the United States Constitution were rewritten to reduce **Congress'** power to make its own procedural rules, such as the filibuster.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

If **Congress** started making decisions that most people disagree with, it might be better to do away with Congress altogether.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The **President of the United States** puts the interests of his party over the interests of the American people.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The decisions made by the **President of the United States** favor some groups more than others.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It would make no difference to me if the United States Constitution were rewritten to reduce the **President's** power to make lifetime appointments to the judiciary.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It would make no difference to me if the United States Constitution were rewritten to reduce the **President's** power to veto congressional legislation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

If the **President of the United States** started making decisions that most people disagree with, it might be better to do away with the Office of the President altogether.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

Do you consider the issue of same-sex marriage to be **primarily:**

0=a moral or religious  
issue 1=a political issue  
2=a social issue  
3=an economic issue  
4=an issue about rights

Do you consider the issue of the online sales tax to be **primarily:**

0=a moral or religious  
issue 1=a political issue  
2=a social issue  
3=an economic issue  
4=an issue about rights

Do you consider the issue of the Guantanamo Bay Detention Facility's operation to be **primarily**:

- 0=a moral or religious issue
- 1=a political issue
- 2=a social issue
- 3=an economic issue
- 4=an issue about rights

Thinking about the role of the **President of the United States** in our democratic system of government, would you say that the President fulfills the role you perceive he ought to play:

- 0=Never
- 1=Rarely
- 2=Some of the time
- 3=All of the time

Thinking about the role of the **United States Supreme Court**, which sits in Washington, D.C., in our democratic system of government, would you say that the Supreme Court fulfills the role you perceive it ought to play:

- 0=Never
- 1=Rarely
- 2=Some of the time
- 3=All of the time

Thinking about the role of **Congress** in our democratic system of government, would you say that Congress fulfills the role you perceive it ought to play:

- 0=Never
- 1=Rarely
- 2=Some of the time
- 3=All of the time

The **President of the United States** uses fair procedures to makes decision in a fair way:

- 0=Almost never
- 1=Rarely
- 2=Some of the time
- 3=Almost always



**Congress** uses fair procedures to make decisions in a fair way:

- 0=Almost never
- 1=Rarely
- 2=Some of the time
- 3=Almost always

The **United States Supreme Court**, which sits in Washington, D.C., uses fair procedures to make decisions in a fair way:

- 0=Almost never
- 1=Rarely
- 2=Some of the time
- 3=Almost always

It is within the authority of the **President's office** to make policy on the issue of same-sex marriage.

- 0=Strongly Disagree
- 1=Disagree
- 2=Agree 3=Strongly Agree

It is within the authority of **Congress** to make policy on the issue of same-sex marriage.

- 0=Strongly Disagree
- 1=Disagree
- 2=Agree 3=Strongly Agree

It is within the authority of the **United States Supreme Court**, which sits in Washington, D.C., to rule on the issue of same-sex marriage.

- 0=Strongly Disagree
- 1=Disagree
- 2=Agree 3=Strongly Agree

The **President of the United States** considers the interests of the people when making decisions.

- 0=Strongly Disagree
- 1=Disagree
- 2=Agree 3=Strongly Agree

**Congress** considers the interests of the people when making decisions.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The **United States Supreme Court**, which sits in Washington, D.C., considers the interests of the people when making decisions.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It is within the authority of the **President's office** to make policy on the issue of online sales taxation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It is within the authority of **Congress** to make policy on the issue of online sales taxation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It is within the authority of the **United States Supreme Court**, which sits in Washington, D.C., to rule on the issue of online sales taxation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The issue of same-sex marriage is controversial.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The issue of online sales taxation is controversial.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

The issue of the Guantanamo Bay Detention Facility's operation is controversial.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It is within the authority of the **President's office** to make policy on the issue of the Guantanamo Bay Detention Facility's operation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It is within the authority of **Congress** to make policy on the issue of the Guantanamo Bay Detention Facility's operation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

It is within the authority of the **United States Supreme Court**, which sits in Washington, D.C., to rule on the issue of the Guantanamo Bay Detention Facility's operation.

0=Strongly Disagree  
1=Disagree  
2=Agree 3=Strongly  
Agree

What is your gender?

0=male  
1=female

What is your age?

- 0=18-21
- 1=22-25
- 2=26-30
- 3=31-40
- 4=41-50
- 5=51-60
- 6=61 or Over

What is the highest level of education you have completed?

- 0=Less than High School
- 1=High School/GED
- 2=Some College
- 3=2-Year College Degree (Associates)
- 4=4-Year College Degree (BA/BS)
- 5=Some Graduate Work (No Degree)
- 6=Master's Degree
- 7=Doctoral Degree
- 8=Professional Degree (MD/JD)

What is your race?

- 0=white
- 1=Black or African American
- 2=Asian
- 3=Native American
- 4=Hispanic
- 5=Biracial
- 6=Multiracial
- 7=Other

In which of these groups did your total family income, from all sources, fall last year before taxes?

- 0=Less than \$10,000
- 1=\$10,000 to \$19,999
- 2=\$20,000 to \$29,999
- 3=\$30,000 to \$39,999
- 4=\$40,000 to \$49,999
- 5=\$50,000 to \$59,999
- 6=\$60,000 to \$69,999
- 7=\$70,000 to \$79,999
- 8=\$80,000 to \$89,999
- 9=\$90,000 to \$99,999
- 10=\$100,000 to \$149,999
- 11=\$150,000 to \$199,999
- 12=\$200,000 to \$249,999
- 13=\$250,000 to \$299,999
- 14=More Than \$300,000

Generally speaking, do you usually think of yourself as a/n:

- 0=Republican?
- 1=Independent?
- 2=Democrat?

Do you consider yourself to be a strong or not so strong Democrat? (of those who chose Democrat in the party1 question, they were asked strong or not)

- 0=Not So
- Strong 1=Strong

Do you consider yourself to be a strong or not so strong Republican? (of those who chose Republican in the party1 question, they were asked strong or not)

- 0=Not So
- Strong 1=Strong

Do you find that you tend to lean toward one or the other of the political parties, the Democratic or the Republican? (of those who chose Independent in the party1 question, they were asked how they lean)

- 0=Lean Republican
- 1=Lean Democratic
- 2=Neither

When it comes to politics, do you usually think of yourself as:

0=Conservative

1=Moderate

2=Liberal

Do you consider yourself to be a strong or not so strong liberal? (of those who chose liberal in the ideology1 question, they were asked strong or not)

0=Not So

Strong 1=Strong

Do you consider yourself to be a strong or not so strong conservative? (of those who chose conservative in the ideology1 question, they were asked strong or not)

0=Not So

Strong 1=Strong

Do you find that you tend to lean toward one or the other, liberal or conservative? (of those who chose Moderate in the party1 question, they were asked how they lean)

0=Lean Conservative

1=Lean Liberal

2=Neither

State of residence:

**SHAWN C. FETTIG, PhD**  
Broomfield, CO

**EDUCATION**

**Political Science**, University of Wisconsin-Milwaukee  
Doctorate Awarded, December 2015  
Subfields: American Politics and Public Administration  
GPA: 3.704

**DISSERTATION**

**Preferred Institutions: Public View on Policy**

In my dissertation, I ask why people might prefer one institution of government (courts, legislatures, executives) over another to handle certain issues. Previous research has focused on legitimacy of the courts, whether institutions can legitimate policy, and how public opinion is thus informed. This research is invaluable in understanding support for and influence of specific institutions, but this only gets us so far. We still do not know *why* people might feel that one institution is more legitimate than another to handle policymaking on a specific issue. In this dissertation, I begin to examine this question arguing that institutions act as source cues to individuals and that those individuals evaluate the appropriateness of institutions to handle issues by considering institutional design (majoritarianism v. counter-majoritarianism), politics (political v. nonpolitical institutions and issues), trust, and regret/disappointment. In short, I suggest that numerous factors play into an individual's preferences for one branch to handle certain issues and that these factors have to do both with beliefs about the institution(s), and perceptions of the issue(s).

**Public Administration**, University of Wisconsin-Milwaukee  
Master's Degree Awarded, May 2007  
GPA: 3.693

**Political Science**, University of Wisconsin-Milwaukee  
Bachelor's Degree Awarded, May 2004  
GPA: 3.510

**PUBLICATIONS**

Brewer, Paul R. and Shawn C. Fettig. 2015. "Gay Rights and the Political Divide." *Polarized Politics: The Impact of Divisiveness in the U.S. Political System*. William Crotty (ed). New York: Lynne Reinner Publishers.

Fettig, Shawn C. and Sara C. Benesh. 2016. "Be Careful with my Court: The Chief Justice and Supreme Court Legitimacy." *The Chief Justice: Appointment and Influence*. David J. Danelski and Artemus Ward (eds). Ann Arbor: University of Michigan Press. Forthcoming.

## CONFERENCE PAPERS

Fettig, Shawn C. 2015. "Institutional Legitimacy: A Comparison Across Branches." Presented at the annual meeting of the Southern Political Science Association, January 2015, New Orleans, LA.

Kaheny, Erin B., John J. Szmer, and Shawn C. Fettig. 2014. "Attorney Expertise Beyond the Threshold: Attorney Expertise in Threshold Versus Non-Threshold Circuit Court Cases." Presented at the annual meeting of the Southern Political Science Association, January 2014, New Orleans, LA.

Fettig, Shawn C. and Sara C. Benesh. 2013. "Be Careful with my Court: The Chief Justice and Supreme Court Legitimacy." Presented at the annual meeting of the Southern Political Science Association, January 2013, Orlando, FL.

Weinschenk, Aaron, Shawn C. Fettig, and Sara C. Benesh. 2012. "Measuring the Legitimacy of the U.S. Supreme Court." Presented at the annual meeting of the Midwest Political Science Association, April 2012, Chicago, IL.

Brewer, Paul R. and Shawn C. Fettig. 2011. "The Rise and Evolution of Political Polarization on Gay Rights Issues (Updated and Revised)." Presented at the annual meeting of the American Political Science Association, September 2011, Seattle, WA.

Brewer, Paul R. and Shawn C. Fettig. 2011. "The Rise and Evolution of Political Polarization on Gay Rights Issues." Presented at the annual meeting of the Midwest Political Science Association, April 2011, Chicago, IL.

Benesh, Sara C. and Shawn C. Fettig. 2011. "Courts as Legitimizers? The Case of Same-Sex Marriage." Presented at the annual meeting of the Southern Political Science Association, January 2011, New Orleans, LA.

## WORKS IN PROGRESS

Fettig, Shawn C. "Institutional Legitimacy: A Comparison Across Branches."

Fettig, Shawn C. "Institutional Legitimacy: A True Measure of Long-Term Sentiment?"

Fettig, Shawn C. *Two Months in Boulder: The Story Behind the First Same-Sex Marriage Licenses in the United States.*



## TEACHING EXPERIENCE

- 2015            **Visiting Assistant Professor**, University of Denver
- *The American Presidency (Autumn 2015)*
  - *Political Inquiry (Autumn 2015/Winter 2016)*
  - *Marginalized Communities and the Law (Winter 2016)*
  - *Law and Society (Spring 2016)*
  - *Judicial Process (Spring 2016)*
- 2012–2015        **Instructor**, University of Wisconsin-Milwaukee
- *Introduction to Political Science (Fall 2013/Spring 2014/Spring 2015)*
  - *Introduction to Public Administration (Fall 2014)*
  - *Law and Society (Spring 2013/Fall 2012)*
- 2013-2015        **Adjunct Lecturer**, University of Wisconsin-Stevens Point
- *Judicial Process (Summer 2015/Fall 2013- Online)*
- 2009–2012        **Teaching Assistant**, University of Wisconsin-Milwaukee
- *Introduction to Political Science (Fall 2011; Spring 2012)*: Developed lesson plans for discussion section meetings weekly; Facilitated five discussion section meetings weekly; Graded all exams and papers
  - *Ethnicity, Religion, and Race (Spring 2011)*: Developed, implemented, and monitored the online course; Graded all relevant exams and papers
  - *Constitutional Law: Federalism (Fall 2010)*: Administered and graded exams; Monitored attendance; Facilitated group discussions and mock trials
  - *Constitutional Law: Civil Rights and Civil Liberties (Spring 2010)*: Facilitated all portions of the online offering of the course, including grading weekly student responses to questions
  - *State Politics (Fall 2009)*: Administered and graded exams; Monitored attendance

## OTHER RELEVANT PROFESSIONAL EXPERIENCE

2014      **Management Analyst III**, Denver Police Department, Planning, Research, and Support Division

- Collect and analyze data and existing policies, procedures, methods, practices, and/or operational areas for possible alternatives/solutions and the feasibility of recommended changes, based on Police Chief's requests.
- Develop proposals and recommendations based on research and analysis for new, revised, and/or improved work processes, policies, procedures, practices, methods, and/or other tools to implement improvements and determine the impact of proposed recommendations and the positive or negative effects to the Police Department.
- Present study findings and recommendations to management staff including budget implications for proposed recommendations and seeks support and approval of proposed recommendations.
- Plan and participate in the implementation of approved recommendations, furnish advice and technical assistance to staff during implementation of recommendations, and take corrective action or recommends modifications to ensure the outcomes defined for the study are achieved.
- Respond daily to public inquiries, via phone, in-person and email, regarding Denver Police Department policy and procedure, best practice, and survey requests.
- Cultivate, foster, and maintain positive working relationships with managers, supervisors, employees, and other stakeholders to gain their cooperation and support in assigned projects/studies.
- Prepare written reports that summarize research, analysis, recommendations, and implementation strategies.
- Conduct business process analysis and redesign using the accepted tools, methods, and concepts.
- Adapt the results of business process analysis to specifying the functional requirements of automated business application
- 

2013-2014      **Research/Policy Graduate Intern**, Milwaukee Fire and Police Commission

- Research case and statutory law related to fire and police activities
- Conduct policy analysis and literature reviews
- Update job descriptions in compliance with local, state, and federal laws
- Administer and proctor exams and training for fire and police
- Develop reports and presentations
- Establish and maintain contacts in comparable fire and police departments nationwide
- Developed policy recommendations for police handling of citizen recording of police behavior and expanded use of Electronic Control Weapons
- Assist in investigations (related to citizen complaints)

## **RECOGNITIONS/HONORS/AWARDS**

- First Year Student Success Award, 2013: Recognized by first-year students as the instructor on campus who has helped them most in their college success
- Graduate School Travel Support, 2011: Awarded to present original research at the annual meeting of the Southern Political Science Association, January 2011
- Graduate Research Improvement Grant, 2013: Awarded funding from the Department of Political Science to field dissertation survey via a competitive process
- Nominated for Distinguished Graduate Student Fellowship, 2012: Department nomination for competitive campus-wide fellowship for graduate students
- Nominated for Graduate School Dissertation Fellowship, 2013: Department nomination for competitive, campus-wide fellowship for dissertators