

# The Applied Legitimacy Index: A New Approach to Measuring Judicial Legitimacy\*

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*Objectives.* This article advances criticisms of the traditional legitimacy index as it relates to determining whether ideological distance predicts an individual's willing to sanction the Court. As a solution to these criticisms, this article develops a new measure of judicial legitimacy, the applied legitimacy index. *Methods.* Using data from the American Panel Survey and item response theory models, this article estimates the applied legitimacy index. Ordinary least squares regression models then compare the effect ideological distance has on both the traditional legitimacy index and the newly developed applied legitimacy index. *Results.* The results indicate that those who are ideologically distant from the Court have diminished views of the Court's applied legitimacy. The substantive effect of ideological distance is much larger for applied legitimacy than when compared with traditional legitimacy. *Conclusions.* This article suggests that the traditional legitimacy index may overestimate loyalty to the Court and underestimate the extent to which individuals are willing to sanction an ideologically distant Court. Based on this, the article advocates that scholars adopt the applied legitimacy index in future studies.

Shortly after the Supreme Court upheld the Affordable Care Act in *Burwell v. King* (2015) and established a constitutional right to same-sex marriage in *Obergefell v. Hodges* (2015), Senator Ted Cruz wrote an editorial in the *National Review* that called the Supreme Court's decisions "brazen" and claimed that the Court's "hubris and thirst for power have reached unprecedented levels" (Cruz, 2015). Senator Cruz obviously disagreed with the Court's rulings and in response to them he introduced a constitutional amendment to overturn the Court's ruling in *Obergefell* and has introduced multiple pieces of legislation to repeal the Affordable Care Act. Further, based on his perception that the Court had overreached its authority and his disagreement with the Court's decisions, Senator Cruz introduced a constitutional amendment that would implement term limits and retention elections for the justices of the Supreme Court. His arguments implied that implementing these changes would ensure the Court could not make decisions like those in *Burwell v. King* (2015) and *Obergefell v. Hodges* (2015) in the future.

Senator Cruz is not the only prominent politician to call for the implementation of judicial term limits or elections for the Supreme Court. Former Texas Governor and presidential candidate, Rick Perry, announced that he supported term limits to "restrict the unlimited power of the courts to rule over us with no accountability" (Gillman, 2011). Former Arkansas Governor and presidential candidate, Mike Huckabee, wrote that "we need term limits for the judicial branch because nobody ought to wear a black robe for the rest of his or her life and believe that he or she is unaccountable for the decisions that are being made (Huckabee, 2015).

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Judicial elections and term limits are not the only form of institutional changes politicians seek in the face of unwanted judicial outcomes. In the fallout of the 2016 presidential election, politicians and political elites on both sides have called for justices to be removed from their position. Republicans have called for Justice Ruth Bader Ginsburg to be removed or recuse herself in cases involving President Trump after she made some negative comments about him and his campaign during the election (Biskupic, 2016). Democrats have considered introducing legislation to impeach Justices Gorsuch and Kavanaugh after the controversial nature of their appointments and confirmations (Krotoszynski, 2018; Seitz-Wald, 2018).

While so far judicial term limits, judicial elections, and increased use of judicial removal have failed to be implemented, policies, such as these, aimed at changing the institutional structure of the Court are becoming more common. As discussion of these policies becomes more popular, it raises interest in how individuals respond to Supreme Court decisions with which they disagree. When faced with outcomes they disagreed with, the politicians and political elites discussed above advocated for changes to the Court's institutional structure in ways they believed would make the Court more friendly toward their policy preferences in the future. If this sort of response to unfavorable Supreme Court outcomes were widespread among the mass public, this would be problematic for the Court's legitimacy.

The expectation of legitimacy theory would be that individuals would tolerate decisions contrary to their preferences because they are loyal to the Court as an institution (Caldeira and Gibson, 1992). However, in many of the examples cited, this is not what is observed. Instead, many politicians sought to change the Court's institutional structure in a way that they believed would make the Court more likely to be aligned with their preferences. Based on this incongruence between theory and observed outcomes, I advance criticisms of the traditional judicial legitimacy index developed by Gibson, Caldeira, and Spence (2003) and advocate for an alternative index based on applied proposals discussed by politicians and elites who seek to change the Court's institutional structure to be used as a measure of legitimacy instead. I refer to this as applied legitimacy. I then study whether ideological distance is correlated to an individual's applied legitimacy and compare this correlation to the Gibson, Caldeira, and Spence (2003) index. I find that ideological distance is correlated with both applied legitimacy and traditional legitimacy but the correlation is much stronger between ideological distance and applied legitimacy than ideological distance and the traditional legitimacy index.

This article has implications for the ongoing debate among judicial politics scholars over whether and to what extent policy dissatisfaction is associated with lower levels of legitimacy for the Supreme Court. The foundation of legitimacy is loyalty to institutions and how they are structured. The results produced in the analysis presented here demonstrate that individuals who perceive there to be policy disagreement between themselves and the Court are more likely to support changing the Court's institutional structure. This finding provides evidence that dissatisfaction is associated with diminished levels of legitimacy and institutional loyalty. The results presented here also have implications for key questions in judicial politics, such as the way scholars conceptualize judicial legitimacy.

## **Legitimacy and the Supreme Court**

In a democratic system, it is paramount that political institutions enjoy broad perceptions of legitimacy from the public (Lipset, 1959). Maintaining high levels of legitimacy helps political institutions achieve implementation of their decisions (Gibson, Caldeira, and Baird, 1998; Gibson, Caldeira, and Spence, 2005; Gibson, Lodge, and Woodson, 2014).

This is especially true of the U.S. Supreme Court. The Supreme Court has no formal implementation mechanism and must rely on other political actors and the public to implement decisions on the Court's behalf. Further, unlike the Congress or the executive, the members of the Court are appointed rather than elected and therefore the Court's institutional support is not replenished through regular elections.

Because maintaining high levels of legitimacy is so crucial for the Court's ability to have its decision faithfully implemented, it is critical to understand the processes through which the Court's legitimacy is increased or decreased. Currently, researchers are engaged in a debate over the extent to which ideological disagreement with the Supreme Court causes individuals to perceive the Court as less legitimate. Resolving this debate helps answer important normative questions about the Court's role in U.S. democracy.

Traditional legitimacy advanced the notion that ideological disagreement with political institutions has a limited effect on how individuals perceive the Court's legitimacy (Easton, 1965; Lind and Tyler, 1988; Tyler, 1991). The conclusion of this research is that when institutions are perceived as fair, they will maintain high levels of legitimacy.

The traditional theory of legitimacy in the context of the Supreme Court is mostly associated with Gibson and Caldeira (2009), who advance the argument that the Court maintains high levels of legitimacy through a process that they refer to as positivity bias. According to positivity bias, perceptions of procedural fairness are reinforced when individuals are exposed to judicial symbols, such as the Court's image as a "marble palace," or how the justices wear robes to separate themselves from politics, and how the Court uses the language of law and constitutional imagery. During events in which the Court is salient, these images are featured heavily in the information environment. Through exposure to these images, preexisting loyalties to the Court are activated and reinforce the idea of the Court as a legalistic and procedurally fair institution (Gibson and Caldeira, 2009). By activating these perceptions of legality and fairness, individuals are more likely to accept unfavorable policies or tolerate an ideologically distant institution. The passivity bias research program finds support in observational and experimental research designs (Gibson, Caldeira, and Spence, 2003; Gibson and Caldeira, 2009; Gibson, Lodge, and Woodson, 2014; Gibson and Nelson, 2016).

Recent scholarship has begun to challenge the findings of traditional legitimacy theory. This scholarship argues that ideological distance and unfavorable Court decisions cause individuals to view the Court as less legitimate. Bartels and Johnston (2012) find that when an individual's self-reported ideology and his or her perception of the Court's ideology are not aligned, the individual views the Court as less legitimate. Key to their study, is the idea that perceived ideological distance is more important than actual ideological distance because often the public will have inaccurate perceptions of the Court's legitimacy. Bartels and Johnston (2012) further demonstrate in an experimental setting that one unfavorable Court decision can decrease legitimacy evaluations.

Other scholars have come to similar conclusions. Christenson and Glick (2015a, 2015b, 2018) use panel surveys to track individuals' attitudes toward the Court over the final weeks of the Court's term. Their panel studies find that individuals' perceptions of the Court's legitimacy decrease when the Court issues unfavorable decisions. They do not find evidence that individuals evaluate the Court more positively after favorable decisions. Badas (2016) argues that individuals come to view the Court as less legitimate through a process of motivated reasoning. Specifically, he argues that individuals view the Court as less procedurally fair as a result of unfavorable decisions and by no longer viewing the Court as fair, they update their legitimacy evaluations.

While recent scholarship has challenged traditional legitimacy theory, the debate of whether ideological alignment with the Court influences legitimacy evaluations is still active (Gibson and Nelson, 2015; Christenson and Glick, 2018). For example, Gibson and Nelson (2015) offer criticisms of the scholarship challenging traditional legitimacy. First, they advance a criticism of some of the items used in the legitimacy index. Second, they advance criticisms about experimental treatments used in the studies. Third, they argue that the substantive effects are small and therefore ideological distance does not endanger judicial legitimacy.

## Measuring Judicial Legitimacy

### *Problems with the Traditional Legitimacy Index*

The criticisms offered by Gibson and Nelson (2015) highlight a problem with the debate on judicial legitimacy. Most notably, there are problems with the measurement of legitimacy and the substantive interpretations of latent concepts. Research on judicial legitimacy almost exclusively relies on the Gibson, Caldeira, and Spence (2003) index. The index asks if individuals believe the Court should be done away with altogether, whether the Court can be trusted, whether the Court's jurisdiction should be limited, whether the Court's ability to exercise judicial review should be limited, and whether the Court favors some groups over others. The responses are then combined together using a summated scale.

The traditional legitimacy index is problematic. While the index includes questions about institutional support broadly, it does not give respondents the opportunity to voice support or opposition to applied proposals aimed at altering the Court, such as those advocated by political elites in the introduction to this article. Even questions in the index about institutional changes are not given in specific terms. Instead, the index asks about limiting the Court's jurisdiction in broad terms, "controversial issues," rather than asking about limiting the Court's jurisdiction on specific issues. Further, questions about doing away with the Court offer no alternative or explanation on how it would change the existing political environment. Such questions are very difficult for individuals to respond to without further information.

The omission of applied questions is consequential for many reasons. Being that loyalty to an institution and its structure is the essence of legitimacy, an adept test of whether ideological disagreement with the Court causes individuals to view the Court as less legitimate would be to determine to what extent ideologically distant individuals supported applied changes to the Court's institutional structure.

Further, using applied questions accounts for the potential that responses are different across broad abstractions of support, such as those in the traditional legitimacy index and more applied proposals that implicate institutional support. Survey research across a broad spectrum of topics within the social sciences has found that individuals think differently about broad abstractions and applied proposals. One example is the literature on tolerance and support for civil liberties. A thematic finding in this literature is that when asking about broad abstractions, people appear very tolerant and supportive of civil liberties; however, when asked about applied situations toward unpopular out-groups or controversial figures or groups, individuals are not as tolerant or supportive of civil liberties as they claim (McClosky and Brill, 1983). Research on attitudes toward government spending provides another example. This research finds that individuals have broad support for reducing

the federal government's spending and are supportive of conservative economic policies. However, when asked about funding for specific policies, individuals express a desire to see funding increased and embrace more liberal policy positions (Ellis and Stimson, 2012).

As these examples demonstrate, the process through which the mass public formulate opinions and attitudes on abstract ideas differs from how it formulates opinions and attitudes on applied proposals. McClosky and Brill (1983) argue that this is because individuals are socialized to these broad conceptualizations of support and do not have the political knowledge to map the abstractions onto specific applications. Therefore, to have a more complete and nuanced understanding of the Court's legitimacy, scholars should do more to analyze the public's preferences on applied changes to the Court and its institutional structure. Understanding how the public supports applied proposals would give interpretations of the effect of ideological distance on legitimacy more meaningful substantive interpretations.

Another problematic aspect of the traditional legitimacy index is that the questions are cognitively complex and amount to "hard issues." Carmines and Stimson (1980) define hard issues as those that require careful consideration of technically difficult choices. The questions of the Gibson, Caldeira, and Spence (2003) index are hard because they require survey respondents to understand complex and technical concepts such as jurisdiction, judicial review, and the Court's established role in American democracy. It is unlikely that participants have a strong understanding of any of these concepts (Delli Carpini and Keeter, 1996; Bullock and Rader, 2018). Therefore, individuals may opt out of these questions or simply select the midpoint response (Sturgis, Roberts, and Smith, 2014). Research addressing judicial legitimacy should instead rely on "easy" issues, which Carmines and Stimson (1980) define as those familiar to large segments of the population and that do not require understanding complex material to interpret and offer a response. Research demonstrates that "easy" issues produce more valid survey responses compared to "hard" issues (Carmines and Stimson, 1980; Berinsky, 2004). Thus, not only should scholars investigate public attitudes toward specific institutional changes but also the institutional changes asked about should be items with which the mass public is familiar.

### ***The Applied Legitimacy Index***

The most commonly introduced proposals to change the Court's institutional structure are related to judicial composition and how the justices are selected (Clark, 2011). A frequently advanced proposal is to remove life tenure for the justices and implement term limits (Calabresi and Lindgren, 2005). Term limits are used in the majority of states, both for their legislatures and their courts. Further, there are often efforts to implement term limits at the national level (Sullivan, 1995; Kurtz, Cain, and Niemi, 2009). Thus, it is likely that term limits are a concept that is familiar to the mass public. Many who advocate in favor of term limits do so in an effort to diminish the Court's institutional power and make the Court more accountable to the public. This is evidenced by the quotes from politicians in this article's introduction. In the fallout of unfavorable decisions, each politician attacked the Court and desired to implement term limits. Further, those who advocate for term limits do so because they believe term limits will instill greater democratic accountability to the Court in ways that the current appointment system does not (Calabresi and Lindgren, 2005)

A second common proposal to change the Court's institutional structure involves replacing presidential appointments with an electoral process. Proposals that advocate for

elections for Supreme Court justices take many forms. Some proposals advocate for the direct election of justices in national elections, while other proposals advocate for non-competitive retention elections at regular intervals (Calabresi and Lindgren, 2005; Davis, 2005). The reasons advocates argue for judicial elections are similar to those for term limits; they believe that direct elections will increase the democratic accountability of the Court and ensure the Court is aligned with the public (Davis, 2005).

A third and more radical proposal—but one that is increasingly becoming more common—is the removal of certain justices from the Court. For example, during the 2016 presidential election, Justice Ruth Bader Ginsburg referred to candidate Donald Trump as a “faker” and someone who has an “ego” (Biskupic, 2016). Justice Ginsburg’s comments led many commentators and President Trump himself to call on Justice Ginsburg to resign or recuse herself in future cases involving Trump (Biskupic, 2016). In another example, many Democratic activists have considered attempting to remove Justice Brett Kavanaugh from the Court after a highly contentious and controversial confirmation hearing that included allegations of sexual assault and Kavanaugh opposing those allegations as a partisan motivated “hit job” fueled by “anger against Trump” and “revenge for [the] Clintons” (Krotoszynski, 2018; Seitz-Wald, 2018; Kavanaugh, 2018). In both claims, each side reasons that a justice has displayed some degree of bias that limits his or her ability to be neutral and treat litigants with fairness. Based on the perception that the justices have prejudiced themselves, they argue that the justices should be removed. While removal legislation infrequently is introduced in Congress, calls for judicial removal are becoming increasingly common, as the examples of Justice Ginsburg and Justice Kavanaugh highlight.

## Data and Analysis

### *Estimating Applied Legitimacy*

The previous section identified three applied proposals aimed at altering the Court’s institutional structure: (1) implementing term limits for the justices; (2) implementing judicial elections; and (3) increased use of removal of justices who do not conform to judicial expectations. As applied proposals, these questions move away from the problems with survey responses to broad abstractions discussed previously. Each of these proposals has the additional benefit of being an “easy” issue that the public can understand without much cognitive energy expended. Therefore, these questions are a better measure of legitimacy than the traditional legitimacy index.

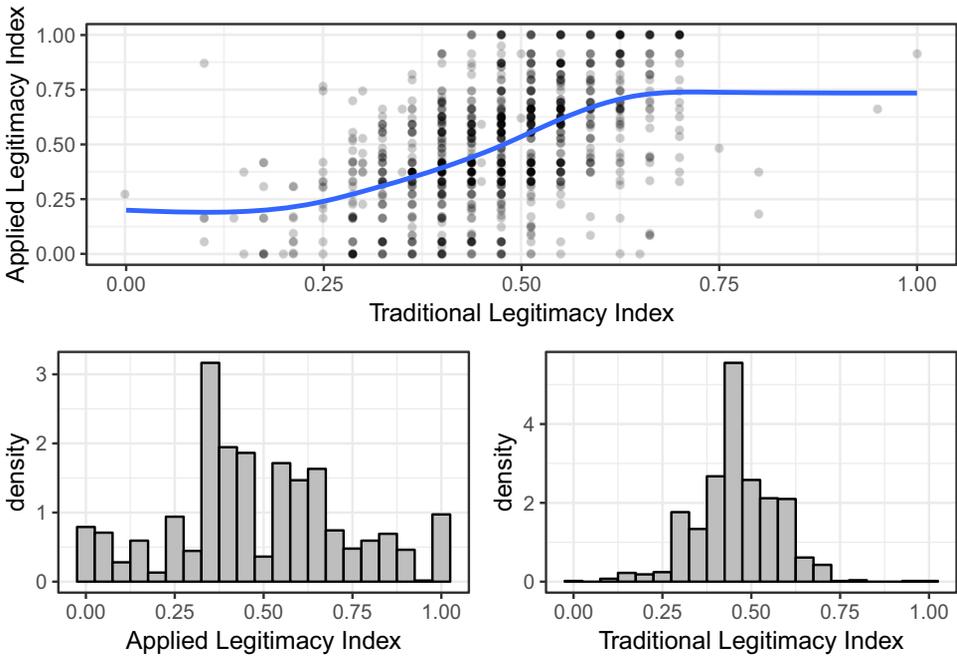
To estimate applied legitimacy, I use data from the American Panel Study (TAPS). TAPS is a monthly online survey in which panelists were initially recruited as a national probability sample in the fall of 2011 by Knowledge Networks. Participants were initially recruited through address-based sampling, meaning addresses were selected randomly from residential addresses stratified using data on age and ethnic group membership. The data used in this analysis come from the June 2012 panel of TAPS.

The TAPS survey asked individuals their level of support or opposition for each of the three applied proposals dealing with changes to the Court’s institutional structure.<sup>1</sup> To estimate applied legitimacy, I use an item response theory (IRT) model, specifically a graded response model. IRT models are used to estimate latent concepts from observed traits. Here, the traits are preferences toward the three applied proposals to change the

<sup>1</sup>Question wording is available in the Appendix.

FIGURE 1

Comparing Distributions of the Applied Legitimacy Index and Traditional Legitimacy Index



Court. Graded response models are used when the traits are measured on an ordinal scale, as the responses to the survey question here are. Graded response models include trait-specific discrimination parameters and trait-response-specific difficulty parameters. Discrimination parameters estimate how well an item distinguishes between those high and low on the latent concept while difficult parameters capture how difficult each trait response is with more difficult trait responses being given more weight in the latent scale. Opposition to the applied proposals indicate that the individual views the Court as legitimate. Figure 1 displays the distribution of the resulting applied legitimacy index and compares it with the traditional legitimacy index.<sup>2</sup> Both scores were rescaled to range between 0 and 1 for comparability. Figure 1 also displays a scatter plot demonstrating the relationship between applied legitimacy and the traditional legitimacy index. The two measures are correlated at 0.52. This indicates that while the applied legitimacy index and the traditional legitimacy index are correlated—as to be expected—they are distinct from a conceptual and empirical standpoint. Some of the key differences are that the applied legitimacy index has higher mean value, a larger standard deviation, and a greater variance.

<sup>2</sup>The traditional legitimacy index was estimated using the summated scale method conventionally used in legitimacy studies. The IRT method of estimating legitimacy has many advantages. Namely, it does not assume equal weight for items. Instead, items are weighted based on their ability to discriminate at various levels of the latent concept. Further, the IRT method can better handle missing data than summated approaches. When the traditional legitimacy index is estimated with an IRT approach, the substantive findings of this article do not change. In that context, the effect of ideological distance using the traditional legitimacy index estimated through an IRT model is 63 percent of the effect size that ideological distance has on the applied legitimacy index. One difference that does emerge is that the mean value of the traditional legitimacy index is higher than the applied legitimacy index when both are estimated using an IRT model.

### *Ideological Distance and Applied Legitimacy*

Scholars are currently engaged in a debate over the extent to which ideological distance from the Supreme Court diminishes individuals' perception of the Court's legitimacy. The argument of this article has been that the current measures of legitimacy limit the ability to answer this question convincingly. This is because the traditional legitimacy index relies on broad abstractions rather than applied proposals that the public actually hears political elites discussing. This is problematic because research indicates the public responds differently to questions about abstractions and applied concepts. Further, the traditional legitimacy index requires a lot of cognitive resources and expects a lot out of survey respondents. To remedy these problems, I recommended the use of an applied legitimacy index comprising easily understood proposals political elites actually discuss when they discuss the Court.

Using the applied legitimacy index as a dependent variable will give scholars a better understanding of how ideological distance influences perceptions of judicial legitimacy. The key independent variable is the subjective ideological distance between a survey respondent and the Supreme Court. This is measured by taking the absolute difference between the survey respondent's self-reported ideology on a five-point scale and his or her perception of the Supreme Court's ideology on the same five-point scale. This difference was rescaled to range between 0 and 1 for ease of interpretation. Using a subjective measure of ideological distance has many advantages. First, a subjective measure does not force a researcher to define a "correct" ideology of the Court and then compare respondents to this "correct" ideology. Second, when individuals are forming attitudes toward the Court, it is likely their perception of ideological distance influences attitude formation rather than actual ideological distance—even if their perception is incorrect (Bartels and Johnston, 2012).

Because the dependent variable is continuous, an ordinary least squares (OLS) regression is estimated. The model predicts an individual's applied legitimacy as a function of his or her ideological distance from the Court. The model controls for how aware the individuals are of the Supreme Court. The purpose of this variable is to capture positivity bias and how frequently individuals are exposed to judicial symbols (Gibson, 2009). The model also controls for the individual's belief in the rule of law. Studies have found that support for the rule of law is strongly correlated with legitimacy (Caldeira and Gibson, 1992). Rule of law is measured using a five-question index similar to that used by Caldeira and Gibson (1992). The model also controls for respondent demographics to account for potential group differences in applied legitimacy. Results of the OLS regression are presented in Table 1. The first column presents the results for the applied legitimacy index, while the second column presents the results for the same model but using the traditional index as the dependent variable.

The results presented in Table 1 provide evidence that as an individual perceives greater ideological distance between the individual and the Court, he or she comes to view the Court as less legitimate. For example, moving from the minimum to maximum ideological distance would decrease an individual's score on the applied legitimacy index by 0.145. This means when faced with an ideologically distant Court, individuals are likely to support applied proposals to alter the Court's institutional structure. This provides evidence that ideologically distant individuals do not remain loyal to the Court.

These results contrast with the findings from the traditional legitimacy index. While ideological distance is a significant predictor of traditional legitimacy, substantively the effect size is much smaller. In the context of the traditional legitimacy index, moving from the minimum to maximum ideological distance would decrease an individual's score by

TABLE 1  
OLS Regression: Comparing Applied and Traditional Legitimacy

	(1) Applied Legitimacy	(2) Traditional Legitimacy
Ideological distance from court	-0.145*** (0.0390)	-0.0635** (0.0224)
Awareness of court	0.0285* (0.0127)	0.0367*** (0.00956)
Support for rule of law	0.0666*** (0.0169)	0.0312*** (0.00929)
Partisanship (↑ Republican)	-0.0254 (0.0136)	0.00615 (0.00761)
Ideology (↑ Conservative)	-0.0172 (0.0110)	0.00127 (0.00604)
Education	0.0629*** (0.0106)	0.0159* (0.00712)
African American	-0.0598 (0.0360)	0.00137 (0.0209)
Hispanic	0.0242 (0.0286)	0.0306 (0.0186)
Age	0.00873 (0.0101)	-0.00232 (0.00653)
Female	-0.0603** (0.0203)	-0.0125 (0.0115)
Constant	0.388*** (0.0632)	0.365*** (0.0406)
Observations	1,102	1,046

NOTE: Standard errors are in parentheses. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$ .

0.0634. This is 43 percent of the effect ideological distance has on the applied legitimacy index. This suggests that studies that rely on the traditional legitimacy index may underestimate the willingness of the public to support applied proposals aimed at sanctioning the Court or making changes to its institutional structure. Thus, those who use the traditional legitimacy index may overestimate loyalty toward the Court.

## Discussion and Conclusion

Scholars are currently debating whether and to what extent ideological disagreement with the Supreme Court causes individuals to view the Court as less legitimate. Much of this research relies on the traditional legitimacy index. The traditional legitimacy index is problematic and potentially obscures the answer to this question. For this reason, I develop an alternative to the traditional legitimacy index, the applied legitimacy index. The applied legitimacy index has many advantages. First, it consists of easy issues that the mass public is able to understand and does not require much cognitive energy to answer, nor does it require information about specialized concepts such as judicial review or jurisdiction. Second, it is based on proposals that political elites are discussing. Thus, the applied legitimacy index captures applied proposals rather than broad abstractions of support. This makes it easier for individuals to map their attitudes into survey responses. It also has the auxiliary benefit of creating better congruence between elite discourse of

institutional changes and what scholars are measuring when they are measuring legitimacy. This improves inferences about whether the public will support specific applied proposals aimed at altering the Court's institutional structure. Further, if any given item in the applied legitimacy index becomes salient, it is possible to decompress and analyze only support for that specific proposal.<sup>3</sup>

Using the applied legitimacy index, I estimated the effect of ideological distance on applied legitimacy and found a strong negative effect; as individuals become more ideologically distant from the Court, the Court has diminished applied legitimacy. Further, the negative effect found was much larger than the effect found when using the traditional legitimacy index. This indicates that research using the traditional legitimacy index may underestimate the public's willingness to support institutional changes to the Court when it is opposed to the policy outputs produced by the Court. For this reason, I encourage scholars to adopt the applied legitimacy index in future research. I also encourage scholars to be dynamic and update the applied legitimacy index as elites begin to discuss new policies. While in recent years, judicial elections, judicial term limits, and removal have been discussed, other applied policies aimed at changing the Court's institutional structure are likely to become popular as well.

Beyond the scope of measuring legitimacy, this article has implications for the meaning of judicial legitimacy. Gibson and Nelson (2015) argue that if legitimacy evaluations are not independent of specific support of—or agreement with—policy outcomes, then legitimacy as a concept is of little value. This argument is likely overstated. While there is a strong relationship between applied legitimacy and ideological distance, this relationship is far from perfect. There are individuals who are ideologically distant from the Court, yet score highly on the applied legitimacy index. Likewise, there are individuals who are aligned with the Court and score poorly on the applied legitimacy index. Future research will have to tease out the specific conditions that will lead ideologically distant individuals to support or oppose applied proposals to alter the Court's institutional structure. Such studies will further the understanding of legitimacy and help highlight its conceptual and normative importance. They may also give practitioners better methods for encouraging the public to accept and implement Court decisions even when it disagrees with them, thereby helping maintain judicial independence.

## **Appendix**

### ***Models on Individual Items***

These models demonstrate that ideological distance from the Court predicts support for each specific proposal, independent of them being scaled together as an index (Table A1).

### ***Traditional Legitimacy Estimated via IRT Graded Response Model***

This part of the Appendix shows that the differences in the applied legitimacy index and the traditional legitimacy index are not due to different estimation methods. Here, both

<sup>3</sup>Analysis of the individual items making up the applied legitimacy index finds that ideological distance significantly predicts support for each item. Results are provided in the Appendix.

are estimated using a graded response IRT model. Figure A1 shows the distributions and scatter plot for both indexes. They are correlated at 0.58—again as to be expected—but are distinct. The applied legitimacy index has a greater variation, higher standard deviation, and a different mean score. Further, the effect of ideological distance is still much stronger on applied legitimacy than the traditional legitimacy index, as shown in Table A2. I believe using the summated scale approach for estimating the traditional legitimacy index is most justifiable because it creates the clearest comparison between the applied legitimacy index and the traditional legitimacy index as it has been used and applied in existing studies.

**Question Wording**

**Applied Legitimacy Index Question Wording**

- Having judges serve a fixed term on the Court like six or eight years rather than serving life terms. How strongly would you support/oppose this proposal?
- Having judges elected by the people rather than appointed by the president. How strongly would you support/oppose this proposal?
  - Response set: Strongly support, support, oppose, strongly oppose
- Justices on the Court who consistently make decisions at odds with what the majority want should be removed from their position. Please indicate your level of agreement.
  - Response set: Strongly agree, agree, neither agree nor disagree, disagree, strongly disagree

FIGURE A1

Comparison of Applied Legitimacy Index to Traditional Legitimacy Theory Index Estimated via IRT

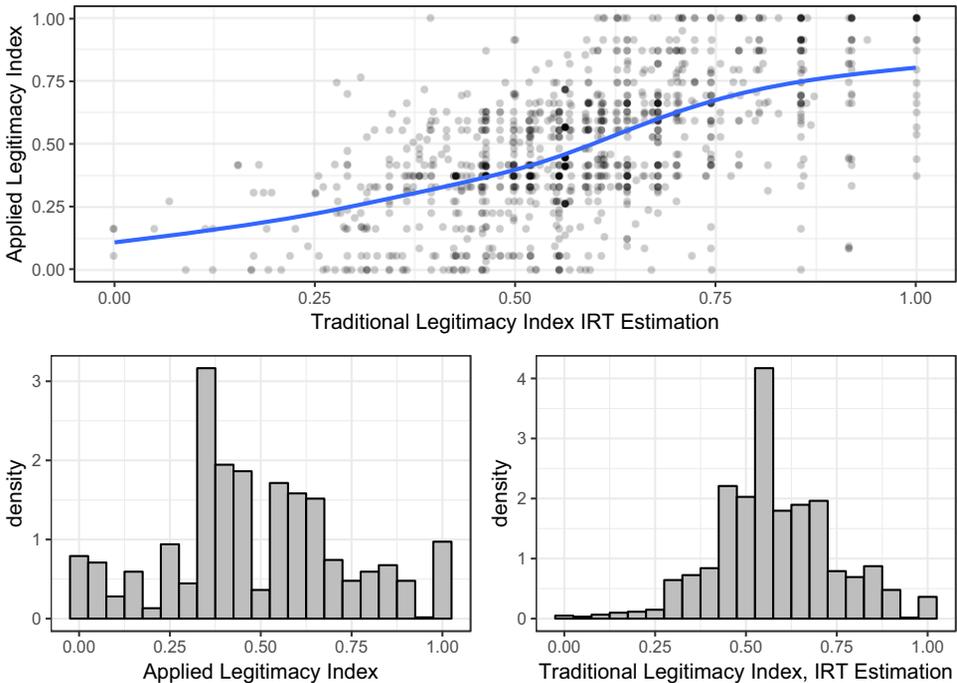


TABLE A1  
Logistic Regression Table

	(1) Term Limits	(2) Elections	(3) Removal
Ideological distance from Court	1.351*** (0.408)	1.083** (0.403)	1.309** (0.456)
Awareness of Court	-0.0688 (0.178)	-0.695*** (0.193)	-0.218 (0.152)
Support for rule of law	-0.183 (0.211)	-0.466* (0.185)	-0.238 (0.192)
Partisanship (↑ Republican)	0.0227 (0.154)	0.351* (0.159)	0.344 (0.178)
Ideology (↑ Conservative)	0.138 (0.109)	0.0413 (0.106)	0.0371 (0.124)
Education	-0.550*** (0.141)	-0.584*** (0.143)	-0.277* (0.126)
African American	0.340 (0.379)	0.106 (0.488)	0.872* (0.425)
Hispanic	0.351 (0.350)	0.112 (0.399)	-0.259 (0.402)
Age	0.180 (0.117)	-0.115 (0.116)	0.0632 (0.138)
Female	0.168 (0.216)	0.369 (0.218)	0.172 (0.243)
Constant	1.279 (0.860)	2.294** (0.821)	-1.445 (0.766)
Observations	1,049	1,029	1,102

NOTE: Standard errors are in parentheses. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$ .

### *Traditional Legitimacy Index Question Wording*

- If the Supreme Court started making a lot of decisions that people disagree with, it might be better to do away with the Court.
- The right of the Supreme Court to decide certain types of controversial issues should be reduced.
- The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.
- The U.S. Supreme Court gets too mixed up in politics.
  - Response set : Agree strongly, agree, are uncertain, disagree, disagree strongly

### *Rule of Law Question Wording*

- It is not necessary to obey a law you consider unjust.
- Sometimes it might be better to ignore the law and solve problems immediately rather than wait for a legal solution.
- The government should have some ability to bend the law in order to solve pressing social and political problems.
- It is not necessary to obey the laws of a government that I did not vote for.
- When it comes right down to it, law is not all that important. What is important is that our government solves society's problems and make us all better off.
  - Response set: Strongly agree, agree, uncertain, disagree, strongly disagree

TABLE A2

OLS Regression: Comparing Applied and Traditional Legitimacy Both Estimated via IRT

	(1) Applied Legitimacy	(2) Traditional Legitimacy IRT Estimation
Ideological distance from Court	-0.144*** (0.0390)	-0.0911** (0.0294)
Awareness of Court	0.0285* (0.0127)	0.0453*** (0.0117)
Support for rule of law	0.0666*** (0.0169)	0.0672*** (0.0140)
Partisanship (↑ Republican)	-0.0253 (0.0136)	0.00148 (0.0117)
Ideology (↑ Conservative)	-0.0172 (0.0110)	0.00152 (0.00770)
Education	0.0629*** (0.0105)	0.0233* (0.0105)
African American	-0.0599 (0.0360)	-0.0132 (0.0284)
Hispanic	0.0242 (0.0286)	0.0452 (0.0252)
Age	0.00872 (0.0101)	0.00291 (0.00763)
Female	-0.0603** (0.0203)	-0.0267 (0.0160)
Constant	0.388*** (0.0631)	0.453*** (0.0568)
Observations	1,102	1,102

NOTE: Standard errors are in parentheses. \*  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$ .

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