

Motivated Reasoning and Attitudes Towards Supreme Court Confirmation Hearings: Evidence from Five Nominations and an Experiment

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Abstract

Relying on theories of motivated reasoning, I hypothesize that individuals who favor a nominee will prefer a legalistic confirmation hearing, while those who oppose a nominee will prefer a politicized confirmation hearing. Analyzing survey data from five recent nominees and a survey experiment, I find support for this hypothesis. The results have implications for how the public interacts with the nature of the Court's hybrid institutional structure. Specifically, I argue the results support the notion that the public engages in a political calculation when making judgements about the Court. When it serves their preferences, people will view the Court as a legalistic institution; however, when individuals believe there is an advantage in viewing the Court as a political institution, they are more likely to desire the Court to be evaluated in political ways.

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When questioned by Senator Patrick Leahy during his confirmation hearing about whether or not he had discussed the merits of the Supreme Court's decisions in *Roe v. Wade* (1973), while a student at Yale Law School, Clarence Thomas replied "I cannot remember personally engaging in those discussions." When Senator Leahy continued and asked Thomas if he had discussed *Roe* in the time since, Thomas replied "Only in the most general sense that other individuals express concerns, and you listen and you try to be thoughtful" and he continued that he did not "recollect commenting one way or the other" and that he did not participate in debates over the Court's decision (Thomas 1991). As the exchange demonstrates, Senator Leahy was very interested in asking Thomas about his attitudes towards abortion, a hot-button political issue. For his part, Thomas avoided making any statements that may be construed as his personal political position on *Roe*, and avoided directly answering other questions on affirmative action, economic regulation, and privacy.

Other Senators choose to ask Thomas questions focused on his judicial philosophies and qualifications. Thomas was not as muted on these issues. Thomas spoke at length about his attitudes towards *stare decisis*, noting that "overturning a case [...] is a very serious matter" and that doing so requires more than the previous case being incorrectly decided. His argument being *stare decisis* provides continuity and predictability to our system (Thomas 1991). On matters of constitutional interpretation, Thomas provided ample commentary on what he thought were appropriate methods of interpretation. For example, Thomas stated that in adjudicating cases judges should look to the "history and tradition of this country." Thomas continued to opine on matters of statutory interpretation stating the role of a judge is to "is to interpret the intent of Congress, the legislation of Congress, to apply that in specific cases." In response to questioning from Senator Joseph Biden, Thomas flatly said that "I don't see a role for the use of natural law in constitutional adjudication" (Thomas 1991). As these remarks demonstrate, Senators were interested in learning about Thomas' jurisprudence on matters of constitutional and statutory interpretation and for his part, Thomas was willing to engage in these discussions.

Thomas' confirmation hearing — and indeed all modern confirmation hearings — highlight the Supreme Court's status as a hybrid institution (Bybee 2010). The Court is an institution that makes decisions on many significant and sometimes controversial political issues. At the same time, the Court is a legal institution that grapples with matters of constitutional and statutory interpretation and provides guidance to the lower courts. When Senators participate in the hearings they have a choice in which aspects of the Court to highlight. They can ask the nominee about their political beliefs and attitudes or they can focus on understanding the nominee's judicial philosophy and qualifications.

Being that the Supreme Court conducts its business largely behind closed doors, confirmation hearings for Supreme Court nominees are one of the most publicized events related to the judiciary. Given the attention they garner, scholars have given considerable attention to understanding public attitudes and political behavior surrounding nominees and the confirmation hearings. This research examines the public's preferences for a politicized or legalistic confirmation hearing. Building on theories of motivated reasoning, I hypothesize that individuals will prefer a legalistic confirmation hearing when they support a nominee and will prefer a politicized confirmation hearing when they oppose a nominee. Using survey data from five nominees, I find support for this hypothesis. I further validate these findings by conducting an experiment. The results of the experiment demonstrate individuals update their preferences for a legalistic confirmation hearings when presented with a nominee who they support and is completely orthogonal to their initial preferences for a politicized or legalistic confirmation hearing. These results have implications for understanding public perceptions of the judiciary and understanding preferences for political procedures.

Public Perceptions of Supreme Court Nomination and Confirm Process

The Supreme Court operates in relative isolation. The Justices' conference discussions are completely private; oral arguments are not broadcasted live¹ and, instead, audio is released days after the arguments. When the Court issues decisions, it does so using dense opinions filled with complex jargon and legalisms without providing any clarifying remarks. Further, outside their formal operations, the Justices rarely speak publicly or grant interviews (Glennon and Strother 2019), instead opting to meet with specialized audiences (Black, Owens and Armaly 2016). Thus, confirmation hearings tend to be the most public events featuring the Court. This is supported by opinion polling on attention to the confirmation hearings. For example, 72% of individuals reported following the confirmation of Amy Coney Barrett very closely or somewhat closely (Fox News 2020), 51% of individuals reported to following the confirmation for Brett Kavanaugh very closely or fairly closely (NewsHour/NPR 2018), 52% reported to following the confirmation of Sonia Sotomayor very closely or fairly closely (Pew Research Center 2009), and 40% reported to following the confirmation of Elena Kagan very closely or fairly closely (Pew Research Center 2010).

Because the Supreme Court confirmation hearings are the most publicized opportunity for the public to engage with the Court, scholars have sought to understand the public's attitudes and beliefs towards confirmation hearing. Some research has sought to understand why individuals support or oppose certain nominees, concluding that individuals tend to support ideological allies and oppose ideological opponents (Gimpel and Wolpert 1996; Hoekstra and LaRowe 2013; Sen 2016). Other factors such as nominee identity and judicial philosophy have also been shown to influence support (Badas and Stauffer 2018; Krewson and Owens 2021). Outside of support for nominees, scholars have examined the extent to which confirmation hearings influence how individuals' view the Court's legitimacy. For example, Krewson and Schroedel (2020), Carrington and French (2021), and

Armaly and Lane (2022) each find that the Court's legitimacy decreased after the confirmation hearing of Brett Kavanaugh. This decrease was especially pronounced for Democrats, who were unable to block the conservative nominee. Glick (2021) finds a similar decrease in legitimacy among Democrats in the aftermath of Justice Ruth Bader Ginsburg's death in 2020. Recent research has also analyzed the broader political implications for confirmation hearings. Badas and Simas (2021) demonstrate that individuals' vote choice in Senate elections is influenced by whether they agree or disagree with how their incumbent had voted on Supreme Court nominees. Bass, Cameron and Kastellec (2020) find that general affect towards Senators is influenced by agreement or disagreement with how they vote for Supreme Court nominees. Badas and Stauffer (2022) show that presidents can gain support by nominating women and individuals from underrepresented racial and ethnic groups to positions within the judiciary.

While there is ample research on many aspects of the public and their attitudes towards Supreme Court confirmation hearings, there is only limited research in how individuals believe the process should be conducted. As the Thomas confirmation hearing discussed in the introduction highlights, the Supreme Court is *both* a political institution and a legal institution (Bybee 2010). Thus, when conducting hearings, Senators have a choice in which of these aspects to highlight. Senators can ask nominees questions that probe their political beliefs or Senators can focus on legalistic factors such as constitutional interpretation and the nominee's qualifications. Understanding whether the public prefers a legalistic or a politicized confirmation hearing is important because it has implications for the myth of legalism (Baird and Gangl 2006) and whether the public perceives the Court differently than other institutions of government. Specifically, it speaks to whether the public views the Court as outside of traditional politics and distinctly legal or whether the public perceives the Court as a political institution.

There are two theories that attempt to explain how the public believes the confirmation process should be conducted. One theory advanced by Gibson and Caldeira (2009 *a, b*) is positivity theory and judiciousness, which states legal frames tend to dominate public

evaluations of the judiciary. In this view, the public desires judicial candidates be evaluated on the basis of how well they fit the standards of judiciousness. This would mean the public holds a preference towards legalistic confirmation hearings, implying the hearings should be conducted to determine how well a nominee matches the role expectation of a Justice, rather than focusing on the nominee's political beliefs. While Gibson and Caldeira (2009*a,b*) do not directly test whether individuals prefer a political or legal confirmation hearing, they do find evidence that individuals who believed then Supreme Court nominee Samuel Alito exhibited the traits of a "good judge" were more likely to support his confirmation.² Thus, providing some indirect evidence that the public may have a preference for legalistic evaluations of Supreme Court nominees.

In contrast, research by Bartels and Johnston (2012*b*) finds that a majority of individuals support a politicized confirmation hearing. A politicized hearing is one where the nominee is questioned about their political beliefs and could potentially be rejected for their political beliefs even if they are seen to have the legal qualifications required for the position. A politicized hearing highlights the political dimensions of the Court and minimizes the legalistic dimension of the Court. They demonstrate this by conducting a survey which directly asked individuals how important nominees' political views were and how important it is for the Senate to consider those views. Bartels and Johnston (2012*b*) further theorize the "political reinforcement hypothesis," arguing that individuals who perceive the Court as an ideological or partisan institution will be more likely to favor the politicized confirmation hearing. Their results support the political reinforcement hypothesis and show that individuals who viewed the Court in political terms are more likely to desire a politicized confirmation process.

The current literature offers two potential answers to whether public prefers a politicized or legalistic confirmation hearing. The research of Gibson and Caldeira (2009*a,b*) suggests individuals would prefer a legalistic confirmation hearing that reinforces notions of judiciousness and determine how well a nominee fits the role of a "good judge." On the other hand, Bartels and Johnston (2012*b*) provide evidence to the contrary. They find that

majorities prefer a politicized confirmation hearing and that this desire for a politicized confirmation hearing is strongest for those who view the Court as a political institution.

Motivated Reasoning and the Confirmation Process

While existing research provides valuable insights on public preferences towards the Supreme Court confirmation process, it does fail to account for how individual beliefs about a nominee shape preferences for legalistic or politicized confirmation hearing. Instead, current research mostly examines preferences towards the nomination hearing outside of any nominee information. For example, the Bartels and Johnston (2012*b*) study asks about general preferences without the context of an ongoing confirmation hearing. Similarly, though, the Gibson and Caldeira (2009*a,b*) studies are targeted to a specific nominee, their studies fail to directly analyze preferences for a legalistic or politicized confirmation. Further, because their studies target one nominee—Samuel Alito—they have potential limited generalizability.

The limitations of previous research damper our understanding of preferences towards a politicized confirmation because the public rarely has stable, meaningful attitudes or preferences (Converse 1964). Instead, public preferences change depending on how issues are framed and the general context and conditions of the target event (Zaller and Feldman 1992). The lack of stability in preferences and susceptible to contextual factors and framing seems especially true on issues of political procedures (VanderMolen 2017). In the context of analysis of a single nominee, that nominees' own idiosyncrasies may masks broader trends that explain public attitudes and preferences. Therefore, studies should seek to analyze as many nominees as possible. In the context of support for a legalistic or politicized confirmation without reference to a specific pending nominee, individuals may answer based on general attitudes towards legal valence, whereas questions targeting specific nominees may active difference considerations and motivations (Scheb and Lyons 2000; Badas 2016, 2019). Therefore, studies should seek to understand how various contextual level considerations and motivations influence support towards nominees.

Some of these considerations and motivations may be related to the specific nominee being considered and how an individual relates to that nominee. Specifically, whether the individual supports or opposes the nominee will influence whether or not they support a legalistic or politicized confirmation process. Individuals who support the nominee will prefer a legalistic confirmation hearing while those who oppose the nominee will favor a politicized confirmation process. This process can occur through directional motivated reasoning. Directional motivated reasoning a form of biased reasoning in which individuals select justifications that validate their prior beliefs or their preferred outcome (Kunda 1990). In the context of Supreme Court confirmation hearings, directional motivated reasoning would lead individuals to select procedures that make it easier for nominees who they support to be confirmed while selecting procedures that make rejection more likely for nominees they oppose.

Past research has examined motivated reasoning in an effort to understand the formulation of political preferences and attitudes (Lodge and Taber 2000). As it relates to attitudes towards the judiciary, Badas (2016) argues the public responds to decisions of the Court through the processes of motivated reasoning. When individuals agree with a decision, they are motivated to perceive the Court as legalistic to legitimize the decision and their attitudes; when they disagree they are motivated to view the Court as political to delegitimize the decision and protect their attitudes. Bartels, Johnston and Mark (2015) find a similar process among members of the Supreme Court bar. Braman and Nelson (2007) and Braman (2006, 2009) argue that the Justices of the Court themselves likely engage in motivated reasoning to arrive at legal decisions that justify their partisan or ideological beliefs.

Why should the mass public engage in motivated reasoning as they decide whether to prefer a legalistic or politicized confirmation process? First, if individuals prefer nominees they support to be confirmed, a legalistic confirmation hearing is the simplest route. Nominees to the Supreme Court are nearly universally qualified for the position. To this point, since the American Bar Association began rating nominees, they have rated each

Supreme Court nominee as qualified or well-qualified.³ Beyond the American Bar Association scores, Supreme Court nominees tend to have elite education credentials, a wealth of experience, and highly-esteemed professional reputations (Badas 2020; Epstein, Knight and Martin 2003; Hitt 2013). If the point of a hearing is to determine whether a nominee is qualified in a legal sense, nominees will easily secure confirmation. For those who hope to see a nominee confirmed, there is no need to deviate from the judiciousness frames that surround debates about the judiciary (Lodge and Taber 2000; Gibson, Lodge and Woodson 2014; Gibson 2015). They accept these frames and see them as determinative because under these procedures, their preferred nominee will easily be confirmed. Therefore, individuals who support a nominee are motivated to support a legalistic confirmation hearing.

However, those who oppose the nominee see no advantage in preferring a legalistic hearing. They understand if the confirmation was to determine legalistic credentials, the nominee who they oppose will ultimately be confirmed. Given this, they are motivated to engage in a reasoning process that departs from the judicious frames and seeks to extend the conflict to a second dimension where they see the probability of success as higher. Considering the dual nature of the Supreme Court as both a legalistic and political institution, adopting a more political frame is the natural dimension to seek this disruption. Consider Robert Bork's 1987 nomination to the Supreme Court. Bork was widely seen as highly qualified, having served as Solicitor General and as a judge on D.C. Circuit Court. Indeed, the American Bar Association rated Bork "well qualified," its highest rating (Taylor 1987). If Bork's confirmation was simply about determining whether or not he had the credentials and experiences expected of a Supreme Court justice, he would have easily been confirmed. However, Bork's nomination was rejected by the Senate in a 42-58 bipartisan vote. This was because Bork's opposition was successful in avoiding legalistic debates over qualifications and instead focused the confirmation hearing on Bork's political views and personal ideology. Bork, unlike other nominees was willing to engage in these questions. As a result, Bork's opposition was able to frame his ideological beliefs as outside

of the mainstream and meriting rejection. In a context where nominees are not usually as forthright in their responses as Bork, the individual is able to rationalize that they ought to be rejected due to their inability to answer questions that the individual deems as “important.” By switching the framing of the confirmation process from legal to political, individuals open up two potential avenues to believe a nominee they oppose ought to be rejected.

The above theory outlines exactly why individuals should engage in motivation reasoning as it relates to Supreme Court confirmation hearings. Before answering that question directly, it is important to understand whether individuals hold the required information to be able to engage in motivated reasoning. In the context of confirmation hearings, individuals are required to have preferences towards specific nominees and have some information about the legal and political framing of confirmation hearings.

A summary of polls presented by Badas and Simas (2021) show that individuals do have preferences on Supreme Court nominees. In surveys most people will articulate a preference for or against confirmation. Relatively few people report to not having an opinion⁴. Thus, it appears that individuals have attitudes towards specific nominees. Likewise, the polling highlighted in the introduction to this manuscript demonstrate individuals tend to follow the Supreme Court confirmation hearings. In another study, Bass, Cameron and Kestellec (2020) provide evidence that suggests individuals follow the hearings close enough to recall how their Senators have voted and hold them accountable for their votes (Badas and Simas 2021). So, it appears that individuals do follow confirmation hearings for Supreme Court nominees and come away with enough information that they are later able to use that information in their voting.

Are individuals aware of the legal and political frames of the confirmation hearing? Supreme Court confirmation hearings receive widespread and prolonged media attention (LaRowe 2010; Solberg 2017). The presentation of the confirmation hearings in the media tends to frame the hearings in both political and legal terms. For example, Xenos (2008) performs content analysis of news articles covering the confirmation hearings and finds

that both political and legal frames are present. In his study 64% of articles discussed political issues such as abortion while 44% of articles discussed qualifications and judicial philosophy, with many articles covering both topics.

Beyond the media, Senators themselves frame the confirmation debate in a way that highlights the distinct political and legal frames. Senators who oppose the nominee will grill the nominee with questions about their political beliefs while those who support the nominee will ask questions about law and legal qualifications. For example, consider the confirmation of Neil Gorsuch. Democrats who opposed his confirmation asked him about his attitudes towards privacy, abortion, and other political topics. This approach contrasts with the approach of Senate Republicans who supported Gorsuch's confirmation. These Republican Senators questioned Gorsuch about his method of constitutional and statutory interpretation. This approach is not limited to the Gorsuch confirmation hearing. Research has shown that opposition-party Senators asks more political and ideological questions of nominees than co-partisan Senators who tend to ask questions about qualifications and experience (Farganis and Wedeking 2014, 2011; Schoenherr, Lane and Armaly 2018).⁵

Research in other contexts demonstrates that individuals are able to draw upon these frames to make political evaluations. Most closely, the previously discussed study by Badas (2016) demonstrates individuals use these frames to legitimize or delegitimize decisions based on the decision's congruence with their own preferences. In another study, Armaly (2020) finds that individuals' political attitudes and attitudes towards procedural fairness interact such that individuals are more likely to tolerate unfair procedures when it validates their preferred political outcome while those who do not receive their preferred outcome give greater considerations to unfair procedures. Based on this literature, it seems that individuals are able to engage in a motivated process that helps validate or invalidate their preferred outcomes by using legalistic and politicized perceptions of the Court.

To conclude, it seems that extant literature demonstrates that individuals tend to hold the information required to engage in motivated reasoning. First, they have preferences towards nominees. Second, they follow the hearings and the coverage of the hearings tend

to highlight the dual role of the Court by highlighting political and legalistic approaches to nominees and decision-making. Based on the theory of motivated reasoning proposed above and the fact that individuals are likely to have the requisite knowledge to engage in motivated reason, I argue individuals who support a nominee will be more favorable of a legalistic process than those who oppose the nominee.

Data & Analysis

Evidence from Five Nominees

In order to test the argument that individuals who support nominees will be more supportive of a legalistic process, I searched the Roper Archives for surveys on public preferences on the confirmation process. This search produced surveys covering the nominations of Brett Kavanaugh (AP-NORC Center 2018), Sonia Sotomayor (CBS News/New York Times Poll 2009), Samuel Alito (CBS News 2006), and John Roberts (Washington Post/ABC News 2005)⁶ Considering the . Searches produced no surveys which asked questions about preferences towards legalistic or politicized confirmation hearings for Neil Gorsuch, Elena Kagan, Merrick Garland, or Harriet Miers. In addition to the surveys found through the Roper Archives, a survey fielded through YouGov on the nomination of Amy Coney Barrett is included in the analysis presented here. The analysis here tests the hypothesis that individuals who are supportive of a nominee will prefer a legalistic confirmation process in the context of five recent nominees. The results are further validated by a survey experiment which determine changes in preferences for legalistic and politicized confirmation processes.⁷

While each survey asks about preferences towards politicized confirmation processes, each does so in a slightly different way.⁸ The Barrett survey includes a two-question battery asking how important her personal political beliefs and ideology, and her professional qualifications and experience should be to Senators. Each question is measured on a five-point scale ranging from extremely important and not at all important. Using factor

analysis, I combined the two items into a single scale. Higher values indicate greater preference for a politicized confirmation process.

The Kavanaugh survey asks a four question battery to gauge the importance of certain criteria for the Senate's consideration of Kavanaugh. The criteria include; the nominees' qualifications and legal background; their personal views on major issues that the Supreme Court decides; their personal history and character; and their political views. The items were measured on a five-point scale ranging from extremely important to not important at all. Using factor analysis, I combined items into a single scale. The resulting scale measures preferences for a politicized confirmation process where higher values indicate greater weight placed on nominee's personal views and political views. Factor analysis confirmed a single dimension.

The surveys taken during the Sotomayor and Alito confirmation hearing measure preferences towards a politicized confirmation process using a single question. The question asked how important it is that Senators consider the nominee's positions on issues such as abortion and affirmative action⁹ before they vote on the nominee's confirmation. The scale was measured on a 4-point scale ranging between not at all important to very important. Higher values indicate greater preference for a politicized confirmation process.

The survey conducted during the Roberts hearing uses three questions to assess preferences for a politicized confirmation process. One question asked if the individual believes that a Senator should vote against Roberts confirmation if they believe him to be qualified but disagrees with his judicial philosophy and legal views. The second question asks whether Roberts should or should not be required to answer questions about how he would have ruled on past cases that came before the Supreme Court. The third question asked if Roberts should or should not have to publicly state his position on abortion before being approved by the Senate. Each question was answered using a should (1) or should not (0) scale. Using a two-parameter item response model I scaled the three items together to create a continuous measure that captures the extent to which survey participants had a preference for a politicized confirmation process. Higher values indicate greater preference

for a politicized confirmation process.

The measures of preferences for a politicized confirmation process will serve as the dependent variable in the analysis. To facilitate standardization across models, each of the dependent variables have been rescaled to range between 0 and 1, with higher values indicating greater support for a politicized confirmation process. Table 1 summarizes preferences towards politicized confirmation hearings. The summary statistics demonstrate a high baseline level preference for a politicized confirmation process. This supports the findings of Bartels and Johnston (2012*b*) as applied to many different nominees. However, while there is a baseline preference for politicized confirmation hearings, there is variation and some individuals have a preference for a legalistic hearings. The argument being made here is the variation is in part explained by support or opposition of the nominee.

Table 1: Summary of Preferences for a Politicized Confirmation Hearing

Nominee	Mean	Std. Dev.
Barrett	0.696	0.245
Kavanaugh	0.712	0.219
Sotomayor	0.728	0.313
Alito	0.689	0.348
Roberts	0.535	0.368
Scale for each nominee ranges between 0-1.		

The key independent variable is an individual’s support or opposition for the nominee. The surveys towards the nominees provide two measures of support for a nominee. The surveys for Kavanaugh and Roberts simply ask survey respondents whether they support (1) or oppose (0) the nominee. The surveys conducted during the Sotomayor and Alito confirmation hearings measure support using a question which asks respondents if their opinion of the nominee is favorable, not favorable, undecided or haven’t heard enough about the nominee. For these two questions I code not favorable as 0, undecided or have not heard enough about the nominee as .5, and favorable as 1. The survey for Barrett used a five-point favorability scale ranging from very unfavorable to very favorable, rescaled to range between 0 and 1.

Beyond attitudes towards the nominee, it is important to control for other variables

that may influence preferences of politicized confirmation process. Each models includes individual demographics including sex, race, age, and education. Each model also includes variables for partisanship and ideology of the survey respondent. Further, each model includes a variable to capture presidential approval. The Kavanaugh model also includes a question on awareness of polarization, which asks participants whether they think politics will become more divided or less divided in the next five years. This may capture some dimension of the Bartels and Johnston (2012*b*) “political reinforcement” hypothesis as those who think polarization will increase prefer political representation over legalistic qualification. The models for Kavanaugh and Alito include a question about respondent’s confidence in the Supreme Court, while the Sotomayor models include a variable capturing how attentive respondents were to the confirmation hearings. The model for Barrett includes questions gauging the extent to which the respondent believe the justices are motivated by their political beliefs. The purpose of this is to capture the “political reinforcement hypothesis” advanced by Bartels and Johnston (2012*b*). The model also includes questions how closely they follow the Supreme Court, and their trust in the Court. The question probing whether the Justices are motivated by politics is the best The Barrett survey also includes an item for executive branch trust since a presidential approval question was not included in that survey. Ideally, each model would include the same controls to facilitate comparability, however given variability across surveys, it is preferable to have coverage of potential alternative explanations when available than to have maximum comparability across models.

I estimate linear models (OLS) for each nominee. The models estimate preferences for a politicized confirmation process as a function of nominee support and the control variables. If my argument is supported, there should be a negative correlation between nominee support and preferences for a politicized confirmation hearing. The models are presented in Table 2. The results across each model support the argument that individuals who support nominees will prefer a legalized rather than a politicized confirmation process. The substantive effect across each model is also rather large, ranging between -.144 and -

.225 decrease in support for a politicized confirmation process. This decrease in support for a politicized confirmation is substantively large. The negative effect of support decreases for a politicized confirmation hearing ranges from 39% of a standard deviation (for Sotomayor) to 73% of a standard deviation (for Alito). Further, within each model estimated in Table 2 nominee support tends produce the largest effects of opposition to a politicized confirmation hearing, the lone exception of the Barrett nomination in which ideology and education had larger effects.

The context of the study provides particularly compelling support for the hypothesis that individuals engage in motivated reasoning when determine how to evaluate Supreme Court confirmation hearings. The study includes multiple nominees, the nominees are drawn from both Republican and Democratic administrations, and the time frame of the study covers over 15 years. This demonstrates that motivated reasoning is a guiding framework that can be used to understand public attitudes towards confirmation hearings generally and it is not limited to a specific president or nominee or a temporal context.

Table 2: OLS Preferences for Politicized Confirmation Hearing

	(1) Barrett	(2) Kavanaugh	(3) Sotomayor	(4) Alito	(5) Roberts
Nominee Support	-0.123*** (0.0356)	-0.138*** (0.0385)	-0.125*** (0.0287)	-0.225*** (0.0495)	-0.179*** (0.0380)
President Approval		-0.0099 (0.0063)	-0.0621* (0.0309)	-0.139*** (0.0392)	-0.0710*** (0.0147)
Ideology	-0.249* (0.120)	0.0135 (0.133)	0.0222 (0.0177)	-0.00297 (0.0190)	-0.0318 (0.0210)
Partisanship	0.005 (0.006)	-0.0267 (0.0145)	-0.0178 (0.0172)	0.0232 (0.0199)	-0.0374 (0.0218)
Age Group	0.015** (0.005)	0.0112 (0.0067)	-0.0134 (0.0136)	-0.0188 (0.0139)	-0.0224* (0.00988)
Female	0.002 (0.017)	0.0241 (0.0171)	0.0584** (0.0226)	0.0879*** (0.0252)	0.0544* (0.0266)
White	0.044* 0.019	-0.0052 (0.0208)	-0.0554 (0.0373)	-0.0891* (0.0355)	-0.0285 (0.0374)
Education	0.015** (0.005)	0.0108 (0.0103)	-0.0232* (0.0103)	-0.0340** (0.0110)	-0.0267* (0.0105)
Court Confidence	0.002 (0.010)	-0.000622 (0.0150)		0.00792 (0.0138)	
Awareness of Polarization		0.0298** (0.011)			
Follows Hearing			0.00388 (0.0144)		
Follows Court	-0.023* (0.009)				
Executive Trust	-0.024* (0.010)				
Political Court	-0.001 (0.119)				
Constant	0.766*** (0.072)	0.718*** (0.0766)	0.937*** (0.0948)	0.989*** (0.0890)	1.137*** (0.0732)
Observations	906	1094	707	937	759

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Survey Experiment

The evidence presented thus far demonstrates that individuals who support nominees are more likely to prefer a legalistic confirmation process, while those who oppose the nominee prefer a politicized confirmation process. This evidence comes from observational opinion surveys drawn five nominees. The observational studies have many strengths. Specifically, they offer attitudes towards nominees during the confirmation hearing, they offer a partisan variability in nominees, and considerable temporal variation. However, it is possible the results are observed due to endogeneity. That is, individuals who support Supreme Court nominees, may in part do so because they prefer legalistic processes to politicized processes.

Using a survey experiment, I rule out the potential endogeneity issue. The experiment presents participants with a profile of a hypothetical nominee for the Supreme Court. The lead-in to the profile was, “The Supreme Court and judicial nominations will be an important issue in the 2020 presidential election. Below is a profile of a candidate who is under consideration for selection by either President Donald Trump or Joe Biden, if he is elected. Please review the profile and answer the questions.” The content of the nominee’s profile is randomized in the style of a conjoint experiment. Features include age, law school attended, expert evaluation of qualifications, judicial philosophy, gender, race, years of legal experience, and whether they are under consideration by Biden or Trump.¹⁰

Considering that prior research has demonstrated that shared partisanship or ideology are the strongest predictors of whether an individual chooses to support a Supreme Court nominee (Sen 2016; Krewson and Owens 2021; Badas and Stauffer 2018), I create a partisan match variable. The partisan match variable is scored 1 if the respondent is a Democrat and the nominee is under consideration by Joe Biden or if the respondent is a Republican and the nominee is under consideration by Donald Trump. All other combinations are scored 0. Thus, individuals are randomized a to view a nominee they are likely predisposed to support due to a partisan match.¹¹ I take this approach because it is not possible

to randomly assignment individual's a nominee they will definitely support or oppose, so randomly assigning partisan match as an indicator for support is the best approach available.

After viewing the profile, participants are asked two questions about their preferences for the Senate considering the nominee's political views during the confirmation hearing. The questions ask "when the Senate potentially votes on this Supreme Court nominee, how important is it that the Senate considers the following" with prompts for "the nominee's political views" and "the nominee's qualifications and legal background." Responses are recorded on a five point scale ranging from extremely important to not important at all.

The experiment was fielded to a sample of 500 participants on Amazon's Mechanical Turk (MTurk). To be eligible for participation, individuals had to be located in the United States, be at least 18 years of age, have completed at least 50 prior tasks on MTurk, and have at least a 95% of their prior tasks accepted. Conducting research on MTurk has some potential drawbacks. Berinsky, Huber and Lenz (2012) show that MTurk samples tend to not be representative of the United States population which may lead to questions related to the external validity of studies conducted on MTurk. However, despite non-representative samples, many studies have demonstrated that MTurk produces consistent results that replicate across nationally representative samples (Clifford, Jewell and Waggoner 2015; Thomas and Clifford 2017; Coppock 2018). To further ensure data quality, I used the protocol developed by Kennedy et al. (2020) to ensure participants are actually located in the United States and that each participant only completed the survey a single time. The survey was conducted on October 9, 2020. Participants were paid 60 cents to complete the survey. The survey's estimated time to completion was three to five minutes.

Using the responses, I created a measure of preference for politicized confirmation process. The measure is derived using factor analysis on the two items to create a single scale. If my argument is supported, participants who have a partisan match with the president of the nominee should have less of a preference for a politicized confirmation hearing. To determine if this is supported in the analysis, I estimate a linear regression

model (OLS) that predicts support for a politicized confirmation hearing as a function of participant’s partisanship match with the president making the nomination. The model also includes all features of the conjoint experiment¹² The results are displayed in Table 3.

Table 3: OLS: Experimental Results

	Support for Politicized Confirmation Hearing
Party Match	-0.144* (0.0626)
Conjoint Features Included?	Yes
Constant	2.026*** (0.275)
Observations	500

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

These results support my argument and demonstrate that individuals who were randomly assigned to view a nominee they were inclined to support are less supportive of a politicized confirmation hearing. For an individual with a partisan match with the president making the nomination, they are estimated to decrease their support for a politicized confirmation process by -.14 or roughly 22% of a standard deviation. These results further validate the observational analysis conducted on the nominations of Barrett, Kavanaugh, Sotomayor, Alito, and Roberts. The results to the survey experiment should ease any potential concerns of endogeneity between nominee support or favorability and preferences for a politicized or legalistic confirmation hearing.

Conclusions and Implications

The Supreme Court is a hybrid institution that fulfils both legal and political functions (Bybee 2010). Nowhere is the hybrid nature of the Supreme Court on display more than the confirmation hearings for individuals nominated to serve on the Court. During these confirmation hearings, Senators bombard nominees with questions on hot-button political

issues such as abortion and affirmation action. Senators also grill nominees over legalistic considerations such their qualifications, constitutional theory, and statutory interpretation. This manuscript has provided an understanding of the public's preference for a political or a legalistic confirmation hearing. Building on theories of motivated reasoning, I argued that individuals who support nominees will prefer a legalistic confirmation hearing while those opposed to the a nominee will prefer a politicized confirmation hearing. Analyzing public preferences across five Supreme Court nominees, I find support for this hypothesis. I further confirm these findings with a survey experiment. In the experimental setting, individuals update their preferences according to the expectations of the motivated reasoning theory advanced in this manuscript. Individuals who were shown a nominee they supported update their confirmation preferences to be more supportive of legalistic approaches, while those given a nominee they opposed update their confirmation preferences to be more supportive of politicized approaches.

The results presented in this manuscript have significant implications. The chief implication is for how the public perceives the Supreme Court and understand its hybrid nature. Often, the Court is thought of and perceived as distinct or separate from politics (Tamanaha 2009; Bybee 2010). Prominent theories of public attitudes toward the Supreme Court rely on this distinction (Gibson and Caldeira 2009*a,b*). According to these theories, the public evaluate the Court using legalistic and apolitical criteria. For example, individuals will view the Court favorably when they believe the Court has followed fair processes and individuals will support nominees who exhibit the traits of a “good judge” (Gibson, Caldeira and Spence 2005; Gibson and Caldeira 2009*a,b*). However, the results presented here do not support this view of the public's attitudes towards the Court. Instead, the results support an alternative view of public attitudes towards the Court. Specifically, findings of this study suggest that the extent to which individuals make a distinction between political and legal approaches to the Supreme Court is itself a politically informed motivation. When individuals believe their political goals will best be achieved through legalistic processes and procedures, they will support legalistic processes and procedures. However,

when individuals believe their political goals will best be achieved through politicized processes and procedures, they will support politicized processes and procedures. This view of the legal and political distinction has found support in other recent research (Badas 2016).

The results suggest that *in certain circumstances* individuals prefer politicized political processes. Current literature finds a general distaste for politicized political processes and shows that when processes are politicized, individuals tend to have greater distrust of government and participate in politics less frequently (Hibbing and Theiss-Morse 2002). Yet, the results presented in this manuscript demonstrate that individuals are willing to tolerate and even prefer politicized processes when they believe it is advantageous to their preferred policy outcomes. This particular finding is especially important to the Supreme Court and the Supreme Court's legitimacy. Many studies have found that the primary source of the Court's eroding legitimacy is the perception that the Court is increasingly politicized (Bartels and Johnston 2020; Gibson and Nelson 2017; Armaly and Lane 2022). The findings presented in this manuscript suggest that this process may be somewhat self-fulfilling, whereas segments of the public demand politicized approaches to the Court. This demand then may cause those individuals to find it distasteful when those approaches are realized and therefore come to approve of the Court less. Thus, future research should further examine when and under which contexts individuals are willing to tolerate or prefer politicized processes and specifically how toleration of these political procedures potentially influences the Court's legitimacy.

A secondary implication is related to understanding the nature of political attitudes and beliefs. Over sixty years ago, Converse (1964) observed that the public rarely has principled political beliefs. Instead, political attitudes and beliefs are shaped by contextual cues and factors (Zaller and Feldman 1992). The results of the analyses presented here provide further evidence that the public lack stable political beliefs and extends those finding to the context of the judiciary, a context not considered by existing studies. Existing studies on attitudes towards the judiciary assume static beliefs about the confirmation hearing or decision-making procedures and do not consider the extent to which these beliefs are

malleable by contextual factors such as attitudes towards the specific nominees under consideration or potential case outcomes. Thus, future studies on judicial processes should understand that beliefs about these processes are not stable, but a function of contextual cues individuals are receiving.

Notes

¹Audio of oral argument has been released live during the Covid-19 pandemic. It is unclear whether the Court will continue live broadcast of oral argument once the pandemic subsides.

²It is worth noting that perceptions of whether individual nominees exhibit the traits of a “good judge” are likely themselves manifestations of the theory of motivated reasoning that I advance later in the paper. Specifically, it is likely that individuals believe a judge has the traits of a “good judge” when they desire that judge to be confirmed.

³The American Bar Association did not issue a rating for Harriet Miers. Miers was widely panned as a nominee and did not make it to a confirmation hearing before requesting her nomination be withdrawn.

⁴As the literature discussed above concludes, having an opinion on a nominee typically requires very little information. Individuals mainly respond based on the president’s partisanship or ideology

⁵It may be argued members of the mass public simply mimic the behavior of elites and do not engage in a motivated process of their own. To address this, I make two points. First, the experiment analysis presented below does not provide elite cues and the results are consistent with motivated reasoning independent of viewing elites. Second, I re-estimate the models for Sonia Sotomayor with an interaction between the extent to which individuals followed the hearing and nominee support. The survey for Sonia Sotomayor is the only survey which asked individuals how closely they followed the hearing. My reasoning here is that if elite cue taking is the primary mechanism, it would be expected that those who follow the hearings the closest and are therefore exposed to more cues should have the strongest effect of nominee support. The results presented in the online appendix demonstrate that the effect size does not significantly vary by how closely an individual followed the hearings. Thus, it appears that motivated reasoning is happening independent of overwhelming elite cues. This is not to say elite cues do not have any effect on attitudes or perceptions of nominees, confirmation hearings, and the appropriate procedures. Future research can address this question more directly (Rogowski and Stone 2019)

⁶Surveys were conducted at various time points in the nomination and confirmation process. The surveys for Barrett and Kavanaugh were conducted after the hearings here completed. Considering the overall trend in the results, I do not believe that because these surveys were conducted after the nominee was confirmed introduces bias. Table 8 of the appendix includes a detailed time line of the key nomination and confirmation dates, as well as the dates the surveys were conducted.

⁷It may be argued that there are two dimensions to confirmation hearings. One dimension is a legal dimension and one dimension is an orthogonal politicized dimension. Results to factor analysis where more than one item is present, confirm that there is a single dimension that captures a range from legalistic confirmation hearing to politicized confirmation hearing. If the items here are analyzed separate,

the results are substantively similar. Those who support Barrett’s confirmation view legal factors as important, those who oppose Barrett’s confirmation view political factors as important. If other scaling techniques are used rather than factor analysis or item response theory—such as Cronbach’s alpha or item response models for categorical variables—the results are substantive similar. Factor analysis is used with the categorical questions in following previous research (Bartels and Johnston 2012a) and IRT is used when there are binary measures because of current best practices (Funk and Rogge 2007). Results with alternative measurement approaches are available in the appendix.

⁸Exact question wording is available in the appendix.

⁹It may be argued that the abortion and affirmative action are themselves legal issues and therefore do not properly tap into a “politicized” support dimension. However, the question wording likely alleviates these concerns. The questions ask whether the nominee should give *their position* on these issues rather than what the nominee thinks the current state of the law is. Future research can analyze whether the public makes distinction between questions asking the nominee their personal positions on legal issues and questions asking the nominee to explain the current state of the law.

¹⁰An example of a nominee profile is available in the appendix

¹¹In the appendix, I demonstrate partisan match is a strong predictor of support in the context of this experiment ($t=3.14$). The effect of shared partisanship is stronger than any individual conjoint feature. These results are presented in Figure 4 and Figure 5

¹²Because the conjoint features are not substantively important to this specific study, they are presented in the appendix to save space and enhance the readability of they key results. To see the full results see Figure 2 and Figure 3 in the appendix.

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