

THE EFFECT OF ORAL ARGUMENT ON PUBLIC PERCEPTIONS OF SUPREME COURT  
LEGITIMACY

by  
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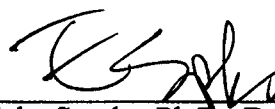
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## **Abstract**

The existing literature on Supreme Court legitimacy suggests that factors such as ideology, political sophistication, judicial symbols, and majority size alter public perception of institutional legitimacy. The Court's most observable component of the decision-making process, oral argument, has never been broadcasted to the public by the media. Considering the possibility of this process being made more accessible by way of cameras in the courtroom, we must consider the effect this exposure will have on public perceptions of Supreme Court legitimacy. Without institutional legitimacy, the Court cannot rely on the reservoir of goodwill to see its decisions implemented (Easton 1965). My main conclusion is that exposure to oral argument of aggressive rhetoric is damaging to public perceptions of legitimacy. I find that the effect of various rhetoric used in oral argument is moderated by two factors: gender and political sophistication. First, the public is susceptible to gender bias in the Court, as females portraying gender congruent rhetoric resulted in higher legitimacy ratings compared to females portraying gender incongruent rhetoric. Second, the politically unsophisticated experienced greater changes in legitimacy ratings and were more susceptible to gender bias compared to the politically sophisticated.

Supreme Court oral argument is the most visible element of the Court's decision-making process (Johnson, Wahlbeck, and Spriggs 2006). Although oral argument is the most observable, the public's exposure to the Court's actions is largely limited to its decisional outcomes. The public has access to oral argument via audio recordings, but they are not broadcasted by the media. Scholars have not yet linked the most observable component of judicial decision making to public perceptions of legitimacy. Studying public reception to oral argument is important when deciding whether or not the process should be made observable to the public by way of cameras in the court room. I propose that aside from oral argument having an effect on judicial decision making, it will also have an effect on public perceptions of Supreme Court legitimacy. The effect of oral argument on the listener is more complicated than it is first seen, as we must take into consideration the characteristics of both the listener and those making the argument. In this respect, dynamics such as gender and political knowledge come into play. I have carried out this study in order to examine these effects and fill a gap in Supreme Court legitimacy literature.

### **Supreme Court Legitimacy Theory**

Legitimacy is a psychological property of an institution that leads people to believe that it is appropriate, proper, and just (Tyler 2006). When an entity is deemed to be legitimate, people feel that they ought to defer to its decisions and rules (Tyler 2006). Legitimacy is important to the Supreme Court, as the Court's independence is compromised if it cannot depend on legitimacy to protect its unpopular decisions (Gibson and Nelson 2016). The Supreme Court lacks the power of the purse and of the sword, so it relies on the reservoir of good will to see decisions implemented (Easton 1965).

The Supreme Court is viewed primarily as a legal institution before it is a political institution. If the Court is seen as being politically motivated, it has a negative effect on

legitimacy. Justices with concerns about legitimacy may shape their votes in highly salient cases to protect the institution (Gibson and Nelson 2016). Without the reservoir of goodwill, the Court cannot rely on legitimacy to see its decisions implemented. When this occurs, the Court is vulnerable to acting strategically. When it is assumed that the judges are making decisions based off of their own political preferences, the Court loses its reputation as an institution with the purpose of implementing the Constitution. When it is perceived that the Court is not doing its job, it is deemed illegitimate.

### *Specific Support vs. Diffuse Support*

Scholars advance two main explanations to account for public perceptions of Supreme Court legitimacy: one based on satisfaction with individual decisions and the other based on support for the institution of the Court. The former is often referred to as specific support and the latter as diffuse support. Specific support asserts that perceptions of Court legitimacy are based on the ideological preferences of the people. Diffuse support focuses on institutional support, such as democratic values leading to the reservoir of goodwill (Gibson and Nelson 2016). Proponents of the diffuse support theory assert that the public's perception of the Court is resilient enough to withstand single decisions made against their ideological preferences.

### *Specific Support*

Johnston, Hillygus, and Bartels (2014) expand on the theory that Supreme Court legitimacy is based on ideological congruence with specific outcomes. They look specifically at the passing of the Affordable Care Act (ACA) and its effect on Supreme Court legitimacy by examining three factors: political sophistication, ACA knowledge, and ideology. Examining public perception to the ACA decision is well-suited for testing explanation to legitimacy for three reasons: it is highly salient, it revolved around a polarized national policy issue, and it

exposed the public to the fact that the Court can be strategic and motivated by non-legal factors (Christenson and Glick 2015). Drawing on Bartels and Johnston's (2013) theory of ideological congruence coinciding with higher perceptions of legitimacy, they provide support for the idea that citizen ideology influences perceptions of legitimacy. When the Court is perceived as being too political based on individual case outcomes, legitimacy is reduced.

Christenson and Glick (2015) also found a strong relationship between ideology and legitimacy in their study of public perception of the Court after the passing of the ACA. The Court's decision on the ACA served as an agent for the public to form a new opinion of the Court's ideology (Christenson and Glick 2015). This comports with Bartels and Johnston (2013), challenging previous claims that ideology has little effect on diffuse support, as their research points that dissatisfaction with a decision can be damaging to institutional support.

### *Diffuse Support*

Scholars whose research focusses on performance satisfaction assert that ideological congruence-or lack thereof-with the Court makes up only a small component of the public's view of its legitimacy. Gibson and Nelson (2015) criticize the work of Bartels and Johnston (2013), claiming that they overestimated the effects of ideology on legitimacy. Proponents of diffuse support, they assert that the institutional legitimacy of the Court is more resilient than they claim, and insist that influencing factors go beyond policy outcomes. They conclude that the legitimacy of the Court is not dependent on the Court making decisions that please the American people, as a divided Court is unlikely to consistently disappoint either the left or the right.

Perceived legitimacy is highly dependent on the public's perception of the Court's performance as an institution, rather than on individual decisions. There is a limited relationship between evaluations of performance and loyalty to the Supreme Court. Gibson et al. (2003)

conclude that institutional loyalty to the Court is weakly related to actions the Court takes at the moment, and commitments to the Court are not a function of whether one is pleased with how it is doing its job. Gibson and Nelson (2015) agree, as their research found that those who support the Court are stronger supporters of the democratic rule of law, are more tolerant of the institution, and are more likely to favor liberty over order when the two are in conflict. Gibson and Caldeira (2009) also reject specific support, asserting legitimacy is not significantly sensitive to the public's dissatisfaction with individual decisions. Their findings also support the idea of positivity theory, the idea that among those in high support, disappointment in a single decision will not have a significant negative effect on legitimacy.

### *Symbols*

The technicalities and symbols of an institution articulate the legitimacy of political systems. For the Supreme Court, its symbols serve as a paradigm for justice. According to Gibson and Caldeira's (2009) positivity theory, the Supreme Court is protected from its constituents' disapproval of its decisions. They found that that exposure to symbols of the Court (e.g. robed justices, gavels) increase institutional support. Symbols act to mitigate the negative consequences for the Court of a decision that runs counter to citizens' policy preferences (Gibson and Nelson 2017). It is inferred that judicial symbols reestablish institutional support of the Supreme Court.

Gibson, Lodge, and Woodson (2014) examine the link between disappointment with a decision and the willingness to challenge that decision. In their experiment, participants were presented with three legal issues and were told to rank them from most important to least important. Participants were told that the Supreme Court made a ruling on the issue most important to them contrary to their preferred decision. Gibson et al. (2014) presented participants

with the Court's decision in a false newspaper headline accompanied by judicial symbols as opposed to the control group, who were shown abstract symbols. They found that the presence of judicial symbols strengthened institutional support for low sophisticates, as well as increased resistance to the Court's decision for those with low support in the first place. Gibson et al. (2014) find that exposure to symbols accelerates the influence of support on acquiescence only for those with high institutional support from the beginning. They decide that the presence of judicial symbols activate the perception of judicial fairness. Gibson et al. (2014) conclude that positivity theory does not provide a primary outcome with exposure to symbols.

Diffuse support is not as impervious as some have thought. In their investigation of the effect of judicial symbols, they find that when disappointment is high, symbols have little to no effect, and when disappointment is low, exposure to symbols reduces disappointment (Gibson and Nelson 2016). The presence of symbols lessens the conversion of disappointment with a decision into a loss of institutional support.

#### *Decision Attributes*

Gibson and Nelson (2015) assert that performance satisfaction is not exclusive to decisional outcomes. Aside from decisional outcomes, the ways in which justices reach those decisions are also important to legitimacy. Majority size and treatment of precedent affect perceptions of Court legitimacy (Zink, Spriggs, and Scott 2009). Presenting participants with four decisional outcomes: unanimous and follow precedent, unanimous and overrule precedent, divided and follow precedent, and divided and overrule precedent, there is a significant difference in support for the decision between the unanimous and follow precedent category and the divided and overrule precedent category, with the former having higher levels of support.

Zink et al. conclude that people are more likely to agree with and accept a position that is decided unanimously and following precedent, even if they disagree with the decision.

Salamore (2014) investigates how Court majority size and judicial dissent affect public opinion. The study examines public reaction to Supreme Court majority size through a series of survey experiments asking questions based on the passing of same-sex marriage (Salamore 2014). The study found evidence that majority size does have an impact on public attitudes toward court decisions, and these results vary based on the salience of the issue involved, with the public being unmoved by majority size in highly salient cases (Salamore 2014). Gibson and Nelson (2015) investigate other institutional factors affecting perceptions of Court legitimacy, including the way decisions are made, the speed in which they are made, how litigants are treated, how the opinion is written, and overall context of the institution.

Christenson and Glick (2015) acknowledge an underlying cause of their results in their study of the ACA ruling. They found that Justice Roberts's reversal in his decision in the ACA ruling led to reduced feelings of legitimacy, thus giving individuals the impression that justices act strategically, rather than serving as implementers of the law. The perceived notion that justices act based on judicial-decision making strategies is damaging to diffuse support. Baird and Gangl (2006) found that citizens react more positively to decisions reached counter to their ideological preference if they are convinced that the decision was legally motivated rather than strategically motivated. Strategic decisions are interpreted as the product of a politically motivated Court.<sup>1</sup>

### *Political Sophistication*

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<sup>1</sup> Easton (1965) uses diffuse support as a synonym for legitimacy.



Individuals who feel ideologically congruent with the Court are more likely to have higher legitimacy ratings, and this is especially true for low to moderate sophisticates (Christenson and Glick 2015). This is echoed in a study of the ACA decision that found the case influenced opinions of Supreme Court legitimacy for low and moderate sophisticates, such that conservatism was consistent with lower levels of legitimacy. In contrast, for the highly sophisticated, conservatism was associated with higher levels of legitimacy (Johnston et al. 2014). It can be assumed that those questioned who held richer knowledge of the Supreme Court hold a higher respect for the intricacies of the institution and its functions. Therefore, the highly sophisticated are less likely to regard the institution as less legitimate, simply based on a decision outside one's political ideology.

### **Theory**

Supreme Court oral argument is an adversarial process. While justices try to get their points across in a limited amount of time, they often interrupt one another and deny others the opportunity to speak. To an untrained observer of the Court, this type of rhetoric may give one the perception that the Court is politically motivated, thus damaging the institution's legitimacy (e.g. Gibson and Caldeira 2011).

The process of oral argument exists to allow counsel to publically deliver their best argument to the justices. Although traditionally thought of as a process used by attorneys to influence the justices, oral argument serves as an opportunity for the justices to bargain over one another's opinion. Johnson, Wahlbeck, and Spriggs (2006) argue that oral argument is more of a dialogue among the justices than a discussion between the court and counsel. It enables justices to argue their issues through the attorneys to try to convince the other justices of their point of view. Oral argument serves as a pre-conference: justices have the opportunity to ask questions

for the attorneys and communicate their preferences to the Court. During this process, the justices' thoughts or theories can be shared to gauge reactions of other Justices without committing to a viewpoint (Johnson et al. 2006).

I theorize that various rhetoric used by the justices during oral argument will affect the public's perception of the Supreme Court, particularly its legitimacy.

Upon being presented with text of oral argument between a judge and an attorney that is aggressive and argumentative in nature, people will view the Court as being politically motivated. Those who are left with this impression are likely to view the Court as an entity that should not be trusted to decide controversial issues for our country, thus reducing perceptions of legitimacy. On the other hand, I project that upon being presented with text of oral argument between a judge and an attorney conducted in an orderly, agreeable fashion with little to no interruption, people will not have a significant altered perception of Supreme Court legitimacy.

H1: Those who are presented with text of oral argument of an aggressive nature will perceive the Court as being less legitimate than those who are presented with text of a congenial nature.

### *Gender and Oral Argument*

Gendered language refers to words and syntax used differently by males and females (Hancock and Rubin 2014). Masculine language style is aggressive, competitive, structured, and includes little intimacy, while feminine language is emotional, cooperative, and intimate (Helweg-Larsen, Cunningham, Carrico, and Pergram 2004). Women use about three times as many pronouns involving the other speaker as men (Hirshman 1994), and approximately six times more intensifiers, which are thought to emphasize the emotional, rather than the cognitive meaning of the message (McMillan, Clifton, McGrath, and Gale 1977).

Dominance theory explains both verbal and nonverbal productions as reflections of social status (Helweg-Larsen et al. 2004). In gender congruent behavior, language is used to either gain dominance by men or to demonstrate submission by women (Hancock and Rubin 2014).

Hancock and Rubin (2014) studied forty participants (twenty male and twenty female) having conversations with trained male and female communication partners. They found that male participants interrupted females an average of 2.1 times, while female participants interrupted males an average of one time (Hancock and Rubin 2014).

Language used to gain dominance includes interruption, which is a major component of aggressive rhetoric in the Court. The Supreme Court is not immune to gender effects (Patton and Smith 2017). Automated content analysis to the transcripts of 3,588 oral arguments found that female lawyers are interrupted earlier, are allowed to speak for less time between interruptions, and are subject to more frequent and longer speeches from the justices. This suggests that gender attitudes held by Supreme Court justices may contribute to female lawyers being interrupted more than male lawyers.

The justices and attorneys involved in Supreme Court oral arguments have sought entry into a competitive and masculine profession (Haynes 2012). Male judges routinely receive higher ABA qualification ratings than female judges (Fix and Johnson 2017). Despite strict rules stating that advocates must stop speaking when a judge begins to speak, approximately 10% of all interruptions that occur in Court were made by male advocates, while female advocates accounted for almost no proportion of interruptions (Jacobi and Schweers 2017). Jacobi and Schweers (2017) discovered that male justices interrupt female justices approximately three times as much as they interrupt each other. In this kind of environment, women do not have equal opportunity to be heard. Males assert an asymmetrical right to control topics and do so

without evident repercussions (Zimmerman and West 1975). When a woman interrupts someone, particularly a man, she is displaying gender incongruent behavior.

The gender of the justice in the presented text will condition the effect of aggressive argument in relation to perceptions of Supreme Court legitimacy. I expect citizens to react more harshly to female aggressors than males due to society's constructed gender norms. I predict that an aggressive male judge would not induce significant negative reactions, as this is gender congruent behavior. Since the assertive act of interrupting is considered to be a masculine act (Jacobi and Schweers 2017), the assertive female justice is deviating from traditional constructions of feminine behavior. I expect many of my participants to be taken aback by the aggressive female, thus reducing court legitimacy.

H2: The gender of the justice will moderate the effect of aggressive argument for perceptions of Supreme Court legitimacy.

### *The Role of Sophistication*

Drawing on Johnson et al.'s (2014) theory of political sophistication, I anticipate that participants who are more knowledgeable of the Supreme Court will have views of legitimacy that will be able to withstand exposure to aggressive rhetoric. Sophisticates have preexisting knowledge regarding the institution of the Court, while the unsophisticated do not, and are more susceptible to change in belief (Johnson et al. 2014). I expect the unsophisticated to have a greater change in perceptions of legitimacy after reading text of aggressive rhetoric, as they are less likely to be aware of Court oral argument being an adversarial process. In addition, I expect the unsophisticated to react more harshly to aggressive female justices, as they are likely unaware of the active role of women in the Court and will respond to the gender incongruent behavior. On the other hand, I predict that the highly sophisticated participants who are given

texts of aggressive rhetoric will be more supportive of the Court and less susceptible to gendered expectations of behavior.

H3: The political sophistication of the participant will moderate the effect of aggressive argument for perceptions of Supreme Court legitimacy.

### **Research Design**

To test my hypotheses, I implemented a survey experiment in which research participants were randomly presented one of four text treatments: a male congenial justice, a male aggressive justice, a female congenial justice, or a female aggressive justice (Figure 1). To assess H1, I will compare the effects of congenial and aggressive arguments. I included identical texts for male and female justices for both types of rhetoric so that I can examine gender as a moderator for aggressive rhetoric (H2).

After being presented with text, participants were asked a battery of questions about perceptions of legitimacy (e.g. Gibson, Caldeira, and Spence 2003; Gibson and Nelson 2015). Respondents answered legitimacy questions on a Likert scale with an index constructed by averaging the numerical ranking of each response. Lastly, participants responded to political knowledge questions so that I can examine political sophistication as a moderator for aggressive rhetoric (H3).<sup>2</sup>

**Figure 1: Treatment Conditions**

<b>Gender</b>	<b>Congenial</b>	<b>Aggressive</b>
Male Justice	Group 1	Group 2
Female Justice	Group 3	Group 4

### **Analysis**

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<sup>2</sup> The treatment and survey questions can be found in the appendix.

**Table 1: Effect of Aggressive Argument on Legitimacy**

	(1) Measure 1	(2) Measure 2	(3) Measure 3	(4) Measure 4	(5) Index
Aggressive	0.0710 (0.130)	0.107 (0.129)	0.0601 (0.118)	0.0440 (0.128)	0.0716 (0.0959)
Constant	2.623*** (0.092)	3.110*** (0.091)	3.383*** (0.083)	2.962*** (0.091)	3.021*** (0.068)
Observations	366	362	366	364	361
R-squared	0.001	0.002	0.001	0.000	0.002

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

To empirically test hypotheses 1, 2, and 3, I implemented an ordinary least squares regression model. To evaluate H1, I regressed perceptions legitimacy on argumentativeness (i.e., aggressive vs. congenial rhetoric); not accounting for the gender of the justice. As shown in Table 1, relative to congenial communications (the baseline), the aggressive treatment shifts attitudes in a positive direction; this is heightening perceptions of illegitimacy. However, these effects are not statistically significant. While it is not significant, the direction of the effect is consistent across all the measures (legitimacy questions). Based on this trend, I conclude that the presentation of aggressive oral argument slightly reduces perceptions of Supreme Court legitimacy.

**Table 2: Gender as a Moderator for Aggressive Rhetoric**

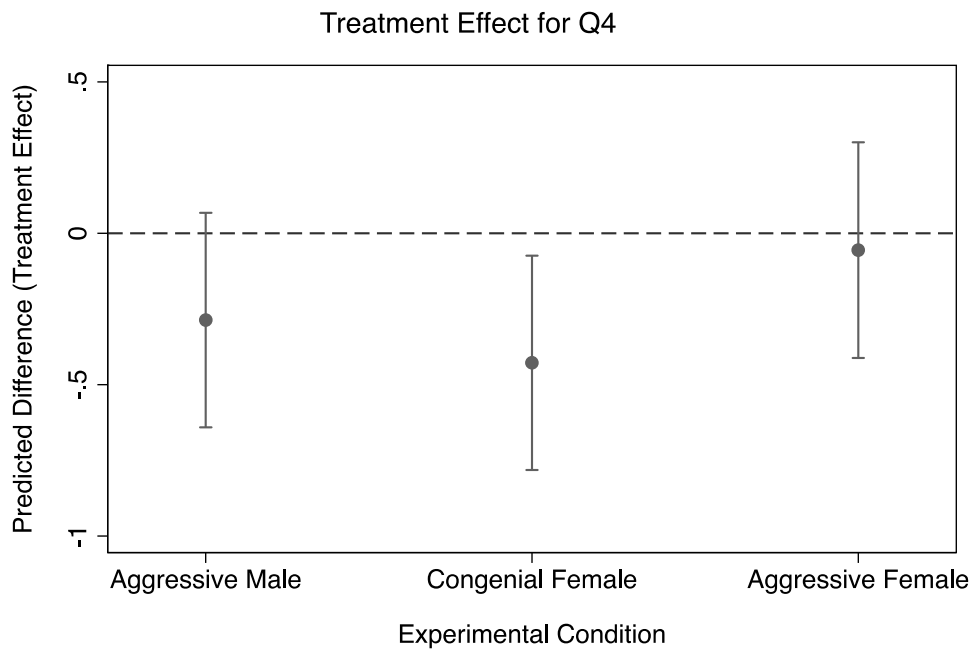
	(1) Measure 1	(2) Measure 2	(3) Measure 3	(4) Measure 4	(5) Index
Aggressive Male	0.168 (0.184)	-0.013 (0.182)	-0.027 (0.167)	-0.286 (0.180)	-0.039 (0.136)
Congenial Female	0.212 (0.184)	-0.134 (0.182)	-0.157 (0.167)	-0.428** (0.180)	-0.130 (0.135)
Aggressive Female	0.187 (0.184)	0.092 (0.183)	-0.011 (0.167)	-0.056 (0.181)	0.053 (0.137)
Constant	2.516*** (0.130)	3.178*** (0.129)	3.462*** (0.118)	3.178*** (0.128)	3.086** * (0.096)
Observations	366	362	366	364	361
R-squared	0.004	0.004	0.003	0.020	0.005

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

To evaluate H2, I regressed legitimacy on each of the four experimental conditions. The baseline for comparison in these models is the congenial male rhetoric. Table 2 reveals that relative to congenial male communications, aggressive female rhetoric often resulted in an index score higher than the baseline and congenial female conditions. Although not statistically significant, these results align with H2, providing some evidence that aggressive rhetoric from a female justice attenuates perceptions of legitimacy. The results of the congenial female rhetoric for Q4 are statistically significant. In Figure 2, the treatment effect of a congenial female in Q4 significantly shifts attitudes in a negative direction; this is increasing perceptions of legitimacy. Upon reading a text of congenial female communications, participants experienced a heightened perception of legitimacy. It can be assumed that the congenial female is fulfilling gender roles, as congenial rhetoric demonstrates submission (Hancock and Rubin 2014).

**Figure 2: Gender as Moderator in Q4**



To test H3, I regressed legitimacy on experimental condition while accounting for the political sophistication of the participant. In Table 3, find the results for political sophistication acting as a moderator for reading argument texts. I will elaborate on its effect as a moderator on perceptions of legitimacy below, in reference to Figure 3.



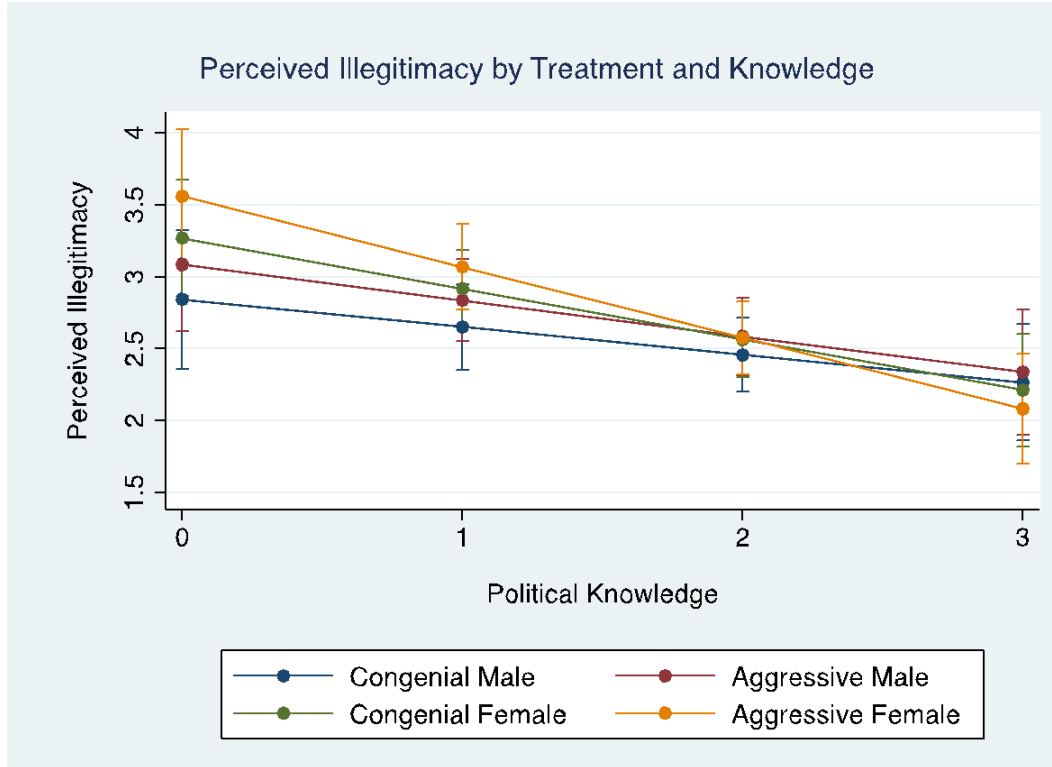
**Table 3: Political Sophistication as a Moderator on the Effect of Argument**

	(1) Measure 1	(2) Measure 2	(3) Measure 3	(4) Measure 4	(5) Index
Aggressive Male	0.243 (0.341)	-0.140 (0.352)	-0.107 (0.323)	-0.269 (0.331)	-0.062 (0.257)
Congenial Female	0.427 (0.320)	-0.090 (0.328)	-0.288 (0.304)	-0.958*** (0.312)	-0.243 (0.240)
Aggressive Female	0.718** (0.341)	0.059 (0.351)	-0.016 (0.324)	-0.231 (0.335)	0.146 (0.259)
Effect of Sophistication on Male Congenial	-0.192 (0.125)	-0.208 (0.128)	-0.056 (0.119)	-0.456*** (0.122)	-0.235** (0.094)
Effect of Sophistication on Male Aggressor	-0.057 (0.178)	0.079 (0.183)	0.036 (0.169)	-0.066 (0.173)	-0.006 (0.134)
Effect of Sophistication on Female Congenial	-0.160 (0.164)	-0.053 (0.167)	0.080 (0.156)	0.293* (0.159)	0.047 (0.122)
Effect of Sophistication on Female Aggressor	-0.300* (0.171)	0.017 (0.174)	2.910 (0.162)	0.103 (0.166)	-0.049 (0.128)
Constant	2.841*** (0.246)	3.533*** (0.254)	3.556*** (0.233)	3.959*** (0.241)	3.488*** (0.186)
Observations	364	360	364	362	359
R-squared	0.094	0.037	0.005	0.130	0.081

Standard errors in parentheses

\*\*\* p&lt;0.01, \*\* p&lt;0.05, \* p&lt;0.1

**Figure 3: Perceived Illegitimacy by Argument and Sophistication**



The figure shows that the politically unsophisticated experienced the greatest shift in perceptions of legitimacy, supporting H3. On the x-axis, 0 represents participants who were unable to answer any political knowledge questions correctly, while 3 represents those who responded correctly to all three questions. The numbers on the y-axis represent the deviation from legitimacy ratings prior to treatment; higher ratings are in accordance with higher perceptions of illegitimacy. The politically unsophisticated reported lower legitimacy ratings for congenial females than aggressive males. It can be gathered that the politically unsophisticated are prejudiced towards female justices, no matter the rhetoric of their argument. As proposed, the politically sophisticated experienced the smallest shift in perceptions of legitimacy, as it can be assumed that they hold a greater awareness of the adversarial nature of oral argument.

### **Conclusion and Discussion**

The most important finding of this study is its simplest discovery: exposing the public to

Supreme Court oral argument is potentially damaging to perceptions of Supreme Court legitimacy. This raises the question of whether or not the general public should have greater accessibility to the most observable part of the Court's decision-making process: oral argument. Currently, the public has access to the inner workings of Congress via televised meetings, but that privilege is unavailable of the highest Judiciary. As expected, the effect of decreased feelings of legitimacy is more severe for those with little knowledge of the workings of the Court. Given that the average American is unaware of the adversarial nature of oral argument, exposure to the process would be damaging to public perception of Supreme Court legitimacy.

Another notable finding is the effect of gender congruent and incongruent behavior by female justices on participants' altered perceptions of Court legitimacy. As expected, participants generally reacted negatively towards female aggressors and positively towards female congenials. These trends were strongly correlated with knowledge of the Court. In fact, the politically unsophisticated appear to hold prejudiced feelings toward females in the Court in general. As shown in Figure 2, the unsophisticated held warmer feelings towards aggressive males than congenial females. If Supreme Court oral argument became accessible to the general public, it could possibly result in negative consequences for the future of increased female representation in the Court. Of course we cannot prohibit the politically unsophisticated from access to oral argument, so the perception of various audiences must be taken into consideration before granting public access.

If I were to carry out a similar experiment again, I would consider the use of audio clips of oral argument instead of textual dialogue. The text provides for a cleaner test, but the audio recordings would allow for participants to have a better comprehension of rhetoric used. Another alteration to consider would be providing participants with background information before being

presented with text. Ensuring basic knowledge of the process of oral argument would allow for a better test of the effect of various rhetoric, but would no longer allow me to test political sophistication as a moderator, as it would be tainted.

Given my analysis, I argue that it is best for the sanctity of the Supreme Court to continue to keep the process of oral argument concealed from the public. Exposure of oral argument would be damaging to public perceptions of legitimacy of the institution. If the Court cannot depend on legitimacy to see its decisions implemented, it is vulnerable to shaping its decisions in order to protect the institution. If justices are deprived of their free ability to make decisions they see best implement the Constitution, then the Supreme Court is no longer serving its function.

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## Appendix

### **Legitimacy Questions:**

Q1: If the Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court all together.

Strongly disagree (1)

Somewhat disagree (2)

Neither agree nor disagree (3)

Somewhat agree (4)

Strongly agree (5)

Q2: The Supreme Court may have its ideas about what the Constitution means, but more important is what the majority of people think the Constitution means.

Strongly disagree (1)

Somewhat disagree (2)

Neither agree nor disagree (3)

Somewhat agree (4)

Strongly agree (5)

Q3: The Supreme Court gets too mixed up in politics.

Strongly disagree (1)

Somewhat disagree (2)

Neither agree nor disagree (3)

Somewhat agree (4)

Strongly agree (5)

Q4: The right of the Supreme Court to decide certain types of controversial issues should be reduced.

Strongly disagree (1)

Somewhat disagree (2)

Neither agree nor disagree (3)

Somewhat agree (4)

Strongly agree (5)

### **Political Knowledge Questions:**

How much of a majority is required for the U.S. Senate and House to override a presidential veto?

One half plus one vote (1)

Three-fifths (2)

Two-thirds (3)

Three-fourths (4)

Who is the current Senate majority leader?

Nancy Pelosi (1)

Paul Ryan (2)

Mitch McConnell (3)



Kevin McCarthy (4)

Who is the Chief Justice of the U.S. Supreme Court?

Clarence Thomas (1)

John Roberts (2)

Anthony Kennedy (3)

Ruth Bader Ginsberg (4)