

## ***Bush v. Gore* in the American Mind: Reflections and Survey Results on the Tenth Anniversary of the Decision Ending the 2000 Election Controversy**

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### INTRODUCTION

Very few, if any, Supreme Court cases have captured public attention on a scale comparable to that of *Bush v. Gore*. The Supreme Court's involvement was the last scene in a political and courtroom drama that played out for more than a month on television. Even if the legal claims, let alone the holding, in the case were difficult for the public to understand, the import and consequences of the case were not: George W. Bush would be the next president. As a rare, high-salience case with understandable political consequences and clear winners and losers, *Bush v. Gore* provided a unique test of the Court's legitimacy in the public mind.

Scholars who studied the aftermath of *Bush v. Gore* found conflicting evidence of the decision's short-term effect on public attitudes toward the Court (see, e.g., Gibson, Caldeira, and Spence, 2003a, 2003b; Kritzer, 2001; Mate and Wright, 2008; Price and Romantan, 2004). A flurry of articles published between 2001 and 2004 debated whether *Bush v. Gore* indeed "wounded" the Court's legitimacy (Gibson et al., 2003a, 2003b; Kritzer, 2001; Price and Romantan, 2004; Yates and Whitford, 2002). Some researchers found that the decision altered short-term attitudes toward the Court with opinion polarized along racial and partisan lines (Kritzer, 2001; Mate and Wright, 2008; Price and Romantan, 2004; Yates and Whitford, 2002), while others found little or no effect on feelings about the Court (Gibson et al., 2003a, 2003b). All seemed to agree, however, that *Bush v. Gore* led to no long-term effects on public opinion about the Court (Gibson, 2007; Mate and Wright, 2008). Within a year, the Court appeared to recover to its pre-*Bush v. Gore* levels in public support, and the structure of support did not reveal sustained levels of racial or partisan polarization.

In the more than a decade since the Court's decision, no survey has been conducted that asks about *Bush v. Gore* or tries to link attitudes toward the decision to opinion of the Court. This chapter discusses the first survey taken on this subject since the initial fallout from the decision. In the first part, we describe the earlier literature on attitudes toward the Court and attitudes toward the decision ending the 2000 recount. Next, we look at results from our recent survey that asked respondents whether they thought the Court's decision was fair or unfair. Although a sizable share (almost 30%) of the population said they did not remember the decision, we found that the public remains polarized along racial and partisan lines in its attitudes toward the decision and that approval of the Bush presidency remains a powerful predictor of attitudes toward the decision. The last section briefly examines the effect of perceived fairness of the decision in *Bush v. Gore* on respondents' approval and confidence in the Supreme Court. Although approval of or confidence in other institutions and officeholders, such as Congress and the president, greatly determined attitudes toward the Court, attitudes concerning the decision in *Bush v. Gore* remain a statistically significant variable in predicting Court approval and confidence.

## BACKGROUND

### Literature on the Effect of *Bush v. Gore*

The debate surrounding *Bush v. Gore* brought to the forefront a number of issues that are often relegated to law reviews and legal symposiums. For instance, what impact do controversial decisions have on public opinion toward the Court in the short term and the long term? Do controversial decisions polarize the public along predictable lines of cleavage and if so, does public opinion about the case continue to polarize the public the same way years after the media spotlight fades? Further, do polarizing Supreme Court decisions have any impact on the public's approval of and confidence in the Supreme Court?

While there generally exists a consensus that the Supreme Court enjoys high levels of mass approval and that its "political capital" can help it generate both support and compliance with its decisions (Grosskopf and Mondak, 1998; Mondak and Smithey, 1997), scholars offer different opinions as to how and when the Supreme Court can actually move public opinion. Under the so-called legitimization hypothesis, some scholars have argued that the Supreme Court acts as a policy elite and leads opinion in a certain way (Clawson, Kegler, and Waltenburg, 2001, 2003). Individual Court cases can crystallize latent attitudes toward a controversial issue, thereby leading to polarization of the electorate as different groups take sides on the issues (Franklin and Kosaki, 1989). Salient Court decisions polarize the electorate because the discourse surrounding the case makes certain considerations more accessible in people's minds,

thereby facilitating people's ability to "make connections between their political and social predispositions and their attitudes about the issue" (Brickman and Peterson, 2006, 107; see also Franklin and Kosaki, 1989; Johnson and Martin, 1998; Zaller, 1992). *Roe v. Wade* provides an illustrative example. As Franklin and Kosaki (1989) found, *Roe* further hardened the attitudes of certain groups, such as Catholics and whites, thereby leading to greater polarization about the decision.

Research concerning the long-term effects of Court decisions on public opinion has been even more limited, in part because of the fact that with the exception of cases like *Brown v. Board of Education of Topeka* or *Roe*, so few Supreme Court cases are recognizable to the American public. Further, the Court often hears multiple cases on controversial issues, making it impossible to test the long-term impact of a single decision on public attitudes. In their study comparing prominent abortion and death penalty cases, Johnson and Martin (1998) argued that the Court's initial decision on a controversial issue polarized the electorate while subsequent decisions did not. Others, like Brickman and Peterson (2006), contend that subsequent cases can polarize the electorate along different lines than the initial case does. For instance, they found that abortion cases subsequent to *Roe* polarized the electorate along different lines of cleavage than the initial decision had. This can be due, in part, to changes in the information environment and the extent to which elite cues cement intragroup loyalty.

Scholars have also debated how controversial Court decisions impact the public's approval and confidence in the Supreme Court in the short and long term. On the one hand, some scholars have claimed that controversial Supreme Court decisions have little impact on perceptions of the Court because support for the Court is largely a product of the public's commitment to a core set of democratic values – such as commitment to social order and democratic norms – acquired through childhood socialization into the democratic process that remains stable over time (Caldeira, 1986; Caldeira and Gibson, 1992; Gibson, 2007; Gibson et al., 2003a, 2003b). Under this line of reasoning, advanced by Gibson, Caldeira, and Spence (2003a, 2003b), among others, this long-standing loyalty to democratic norms and to the Court's place in that system is so strong and secure that short-term displeasures with specific decisions fail to affect the primarily positive view that Americans have of the Supreme Court. The Court's legitimacy thus functions as a "reservoir of good will" that is rarely depleted by a particular Court decision (Gibson et al., 2003a, 365). Echoing the work of Easton (1965, 1975), Gibson and colleagues distinguish between "specific" support and "diffuse" support. "Specific" support refers to "approval of policy outputs in the short term," while "diffuse" support denotes "fundamental loyalty to an institution over the long term" and support that is "not contingent upon satisfaction with the immediate outputs of the institution" (Gibson et al., 2003b, 537). While Caldeira (1986) found that judicial action affected public attitudes toward the justices ("specific"

support), Caldeira and Gibson (1992) concluded that the same behavior of the Court had no impact on the Court's "diffuse" support, at least among the mass public.<sup>1</sup>

Under this line of reasoning, scholars argued that *Bush v. Gore* failed to alter public attitudes toward the Court's legitimacy (Gibson, 2007; Gibson and Caldeira, 2009a, 2009b; Gibson et al., 2003a, 2003b). Using the concept of "diffuse" support as the appropriate metric in which to assess opinions on the Court's legitimacy,<sup>2</sup> Gibson and colleagues, in their examination of cross-sectional data from three surveys spanning from 1987 to 2001, concluded that while opinion toward the Court may have become more polarized after *Bush v. Gore*, the 2000 election controversy did not in fact threaten the Court's legitimacy and that any effect *Bush v. Gore* had on the Court's "enduring loyalty" was "marginal indeed" (Gibson et al., 2003b, 543, 553). To the contrary, they found that the Court "enjoy[ed] at least a moderate degree of loyalty from the American people" (Gibson et al., 2003b, 545).<sup>3</sup> They explained this finding by reference to "positivity frames" whereby exposure to courts and "symbolic trappings of judicial power" serve to enhance judicial legitimacy, even among those unhappy with the Court's decisions (Gibson et al., 2003b, 553). Gibson and colleagues also found that while blacks as a whole were less supportive of the Court than whites, blacks nevertheless were still generally loyal to the Court as an institution – notwithstanding Court decisions that they may find unsavory – and *Bush v. Gore* failed to change "basic attachments to the institution" (Gibson et al., 2003b, 543).

Gibson (2007) reached much the same conclusion regarding the long-term effect of *Bush v. Gore*. Examining data from a 2005 survey as well as data from surveys spanning from 1987 to 2005, Gibson discovered that neither partisanship nor ideology affected "diffuse" support for the Court five years after the decision and indeed, those having strong partisan views actually expressed higher support for the Court. Consistent with Gibson and colleagues' earlier work, Gibson also concluded that the most substantively important predictor of loyalty after *Bush v. Gore* continued to be measures of democratic values – such as support for the rule of law and support for a multiparty system. Nevertheless, Gibson found the black variable to be noteworthy, indicating that after the 2000 election, blacks in fact had statistically significantly less support for the Court than nonblacks.

Contrary to Gibson and colleagues, some scholars claim that Supreme Court decisions, particularly polarizing ones, can have immediate and lasting effects on public perceptions of the Court and that the Court can indeed suffer a backlash as a result of issuing a controversial decision. Grosskopf and Mondak (1998) found that opinion on polarizing abortion and flag burning cases affected respondents' confidence in the Court. Supporting this line of work, Mondak and Smithey further concluded that the Supreme Court can regenerate support through its decisions because any support lost due to displeasure with a decision was recovered "due to public perception of a link between

the Supreme Court and democratic values” (1997, 1124). Scholars have also explored the impact of group-centric forces on support for the Court.<sup>4</sup>

Some scholars studying the impact of *Bush v. Gore* found that it had an effect on the public’s perception of the Court, at least in the short term. In his study of the 2000 election, Kritzer (2001) found that before the decision, there was no discernible relationship between partisan identification and attitudes toward the Court. By the time of the decision, however, a clear pattern became readily apparent, with feelings about *Bush v. Gore* itself being an important variable explaining the difference in the two time periods. Price and Romantan (2004) also found that confidence in the Court changed markedly after *Bush v. Gore* with divisions centering on public feelings on the decision’s merits. They found that confidence in the Court rose significantly from August to December 2000, and then declined by February 2001 after the last wave of the survey. Yates and Whitford (2002) also concluded that *Bush v. Gore* polarized the electorate along partisan lines.<sup>5</sup> Their data indicated that while Republican support for the Court rose from 60 percent to 80 percent in the wake of the decision, Democratic support fell from 70 percent to 42 percent. Analyzing data from the 2000 National Annenberg Election Study (NAES), Mate and Wright (2008) similarly found that *Bush v. Gore* affected both “specific” and “diffuse” support for the Court, especially among partisans. They found polarization on the basis of party, ideology, and race (among other groupings) with respect to respondents’ “specific” support of the Court in the aftermath of the decision. In their analysis of “diffuse” support, Mate and Wright similarly found a marked change in public attitudes before and after the decision, especially among blacks and partisans, though it was not as drastic a change as that found for “specific” support.

Yet, like Gibson (2007), scholars studying the topic found that *Bush v. Gore* led to no long-term effects on public opinion about the Court. While they believed, contrary to Gibson and colleagues, that *Bush v. Gore* had some immediate impact, Yates and Whitford agreed with them that any short-term effect declined over time and would “likely continue to fade” out (2002, 116). Mate and Wright, using the 2004 NAES, also found that the effect of *Bush v. Gore* on levels of “diffuse” support had “largely disappeared” by 2004 (2008, 346).<sup>6</sup> Significant, however, contrary to Gibson (2007), Mate and Wright (2008) still found ideology to be at least a statistically significant variable in predicting “diffuse” support for the questions they examined from the 2004 NAES.

To some extent, the conflict between the Gibson and colleagues’ camp and the others rests on different measures used to assess public attitudes toward the Court, with each scholar using different survey questions as their dependent variable. Gibson and colleagues (2003a, 2003b) critique some scholars as improperly relying on “approval” or “confidence” questions because they contend such questions are too dependent on short-term forces and really measure “specific” support rather than “diffuse” support. Mate and Wright (2008), for instance, measured “specific” support by a question asking respondents



how much confidence they had in the Supreme Court to deal fairly with the 2000 election controversy. They measured “diffuse” support by another question asking how much confidence the respondents had in the judicial branch of government, including the Supreme Court. By contrast, Gibson and colleagues (2003a, 2003b) measured “diffuse” support by constructing a variable based on respondents’ answers to questions about the Supreme Court, such as whether we should do away with the Court or whether the Court can be trusted. Higher mean scores showed greater institutional loyalty to the Court. Because of the variations in question wording – that is, some scholars measuring approval or confidence and others measuring loyalty – it is impossible to compare the results directly. Both measures are important to understanding the public’s feelings about the Court.

### **Public Opinion about the Court’s Decision in *Bush v. Gore* and about the Court Itself in 2000**

We first discuss the results of the 2000 NAES to see the status of public opinion on both the fairness of *Bush v. Gore* and on the Court in the immediate aftermath of the decision. The 2000 NAES is a useful and largely unanalyzed vehicle by which to test such hypotheses, because although it did not conduct a panel study around the Court’s decision in *Bush v. Gore*, the survey did ask questions on the issues surrounding *Bush v. Gore* both before and after the decision’s release on December 12, 2001.<sup>7</sup>

Responses to many questions on the 2000 NAES show just how polarized the country was in the immediate aftermath of the decision. The survey questioned respondents as to whether they felt that the Supreme Court acted fairly in declaring the Florida recount unconstitutional. Fifty-four percent said they felt the decision was fair compared to 40 percent who felt it was unfair, with an additional 5 percent saying they did not know.<sup>8</sup> Despite a majority of most educational groupings saying the decision was fair, only 37 percent of the least educated Americans – those without a high school diploma – felt the decision was fair. Further, while a majority of whites and Asians felt the decision was fair, only 18 percent of blacks felt similarly, with 76 percent of blacks saying the decision was unfair when questioned by NAES in the month after the decision. Democrats and liberals alike also said the decision was unfair, with less than a third of each of those groups expressing support for the Court’s decision. By contrast, 85 percent of Republicans and 72 percent of conservatives said the decision was fair.<sup>9</sup>

Still other questions on the survey queried respondents on whether they felt that personal beliefs motivated the justices’ decision making in the case. One question asked respondents whether the Supreme Court justices’ personal views affected their votes in *Bush v. Gore*. The answer was surprising – opinion was split with 47 percent answering yes and 47 percent answering no.<sup>10</sup> Yet, when we broke down the number by how respondents actually *felt* about

the decision's outcome, we saw a great deal of polarization. Of those who felt the decision was fair, 28 percent said that personal views dictated the justices' votes. By contrast, 76 percent of those who viewed the decision as unfair thought personal views motivated the justices' reasoning.

Still, despite showing polarization on many matters surrounding *Bush v. Gore*, the 2000 NAES also revealed that on some matters, public opinion heavily favored one side over the other. Consistent with Gibson and colleagues' (2003a, 2003b) argument that the public has positive opinions on the Court's legitimacy, the 2000 NAES showed that the public felt obliged to obey whatever decision the Court made. Before the decision, 88 percent said that they would accept the word of the Supreme Court as the "final word" on the Florida recount; after the decision, 73 percent expressed this view.<sup>11</sup> When asked whether they thought partisans would accept the Court's decision as the final word, nearly 65 percent thought they would.<sup>12</sup>

The 2000 NAES also asked questions that arguably can be said to measure both "specific" and "diffuse" support. With respect to "specific" support, the 2000 NAES asked: "How much confidence do you have in the U.S. Supreme Court to deal fairly with the situation surrounding the results of the election for president? A great deal, a fair amount, not too much or none at all?"<sup>13</sup> Before the decision, 36 percent said they had a "great deal" of confidence, 47 percent said a "fair amount," 10 percent said "not too much," 5 percent said "none," 2 percent said they did not know, and less than 1 percent did not respond. After the decision, 32 percent said a "great deal," 35 percent said a "fair amount," 18 percent said "not too much," 13 percent said "none," 2 percent said they did not know, and less than 1 percent did not answer. There were noticeable shifts in opinion along the lines of age, education, party, ideology, race, and Bush approval, among other variables, indicating at least in the immediate short term, *Bush v. Gore* had some effect on the way specific groups viewed the fairness of the decision.<sup>14</sup> As an example, blacks in particular exhibited a noticeable decline in confidence in the Court to decide *Bush v. Gore* fairly. Before the decision, 29 percent of blacks had a "great deal" of confidence and after the decision only 6 percent had that same opinion. Further, the percentage of blacks expressing no confidence in the Court went from 10 percent before the decision to a remarkable 35 percent after the decision.

The 2000 NAES also asked a question concerning confidence in the Court.<sup>15</sup> The question was: "Please tell me how much confidence you have in the Judicial Branch of government – this includes the U.S. Supreme Court. Do you have a great deal, a fair amount, not too much or none at all?"<sup>16</sup> Before the decision, 23 percent said they had a "great deal" of confidence, 50 percent said a "fair amount," 19 percent said "not too much," 5 percent said "none," 2 percent said they did not know, and less than 1 percent did not respond. After the decision, 21 percent of respondents said they had a "great deal" of confidence, 50 percent said a "fair amount," 21 percent said "not too much," 6 percent said "none," 2 percent said they did not know, and less than 1 percent did

not respond. Looking at these numbers alone, we did not see much difference between the two periods on this measure. Although it was not as extensive as the discrepancies observed for the “specific” support measure, there still were noticeable changes in confidence in the federal judiciary as a whole before and after the decision once we looked at the data broken down by factors like race and party, among other variables. For instance, we saw a noticeable decline in the confidence that blacks had in the federal judiciary. Whereas before the decision 19 percent of blacks had a “great deal” of confidence in the judiciary, after the decision only 9 percent had that same viewpoint. We saw a similar decline among Democrats; before the decision 25 percent of Democrats expressed a “great deal” of confidence in the judiciary. This number declined to 17 percent after the decision in *Bush v. Gore* was announced.

The results of the 2000 NAES underscore the impact that the decision had in polarizing groups. Consistent with the logic of Franklin and Kosaki (1989) in their study on the impact of *Roe*, the Supreme Court’s opinion in *Bush v. Gore* seemed to crystallize public attitudes, thereby intensifying the intragroup solidarity of certain groups. This resulted in polarization on the basis of race, party, and ideology, among others. As one scholar put it, such group forces “are the filters that structure and condition the Court’s capacity to throw the cloak of legitimacy on a policy” (Clawson et al., 2001, 580). These particular cleavages, of course, were not unexpected. Indeed, elite discourse on *Bush v. Gore* centered on partisan cleavages. That opinion polarized on the basis of race was also of no surprise, because elite conversation heavily focused on the racial undertones of the 2000 election. Further, scholars have concluded that *Bush v. Gore* had a tangible influence on the black community. Indeed, Avery (2007) found that blacks as a whole felt that the *Bush v. Gore* decision was illegitimate and that it only reinforced their mistrust of the political system.

#### ATTITUDES TOWARD *BUSH V. GORE* TEN YEARS LATER

Since the initial fallout from the decision, no survey to our knowledge has specifically asked respondents their opinion of the Court’s decision in *Bush v. Gore*.<sup>17</sup> Examining the structure of public opinion on *Bush v. Gore* ten years later is particularly important so as to see whether the initial polarization toward the decision (if not the Court) lasted beyond the contentious context in which it was delivered. Furthermore, if the structure of opinion has changed since the decision’s release, perhaps we can learn larger lessons about the factors that affect retrospective attitudes toward the Court’s involvement in politically charged cases.

We begin with the simple results from our question assessing the fairness of *Bush v. Gore*. We commissioned a survey called the Constitutional Attitudes Survey (CAS). The survey, conducted in June 2010,<sup>18</sup> asked a national random sample of 1,027 people questions on a host of topics. We structured the survey to follow what we thought was the appropriate causal structure



of the variables – measuring values first, then issue positions, then approval. Regarding opinion on *Bush v. Gore*, we asked respondents the following: “You may remember that ten years ago the U.S. Supreme Court issued a decision in the case concerning the counting of ballots cast in Florida in the 2000 presidential election contest between George Bush and Al Gore. Do you think the Supreme Court decided that case fairly?” They responded as follows: 33.7 percent said the decision was decided fairly, 35.2 percent said it was not decided fairly, 28.4 percent said they did not remember, and 2.6 percent refused to answer.<sup>19</sup> Two conclusions immediately jumped from the responses: (1) a substantial share of the public did not remember (or did not have an opinion) about the case; and (2) those who did have an opinion were evenly split on the fairness of the decision.<sup>20</sup> Although Americans were less likely to have opinions about the decision than they did ten years prior, they were no less divided.

However, these simple results told us nothing as to the structure of opinion and non-opinion or as to the roots of polarization (if it exists) over the decision. We began to tackle those questions by assessing the demographic breakdown on responses to the question. We suspected (and found) that age and education strongly related to having an opinion, while race correlated with the perceived fairness of the decision – a conclusion that we later found support for in the multivariate statistical analysis. As one moved from the youngest cohort (18 to 29) to the oldest (older than 60), the share without an opinion dropped by eighteen percentage points from 42 percent to 24 percent.<sup>21</sup> The same pattern held as one moved from the least educated group without a high school diploma to those with a college education – the share choosing “don’t remember” dropped from 44 percent to 17 percent.<sup>22</sup>

The racial breakdown of opinion hints at continuing racial polarization over the decision, similar to that found in the 2000 NAES. When questioned in the month after the decision in the 2000 NAES, 76 percent of blacks felt the decision to be unfair compared to only 18 percent who felt it was fair. Blacks today remain overwhelmingly of the belief that the decision was unfair – 64 percent expressing that opinion and only 10 percent saying it was fair. If we only looked at those expressing an opinion, the discrepancy was even more dramatic: 87 percent of blacks who had an opinion on the case thought that the decision reached in *Bush v. Gore* was unfair. Whites were more evenly split, with a plurality (40% compared to 31%) saying the decision was fair. As we investigated in the multivariate analysis, however, one could argue that much of these racial differences could be attributable to partisan differences among racial groups as blacks are prominently Democratic and may be more likely to disapprove of Bush.

Nevertheless, while it is difficult to make predictions both because of the sample size and the fact that our survey yielded hardly any self-described black Republicans (either weak or strong), a closer look revealed a racial effect independent of political opinions. For instance, we found that 15 percent of black moderates approved of the decision compared to 45 percent of nonblack

TABLE 3.1. Age, Education, Race and Opinion on Bush v. Gore (%)

	Fair	Unfair	Don't Remember
<b>Age</b>			
18-29	27	31	42
30-44	33	37	31
45-59	35	42	23
60+	43	34	24
<b>Education</b>			
Less than H.S.	24	32	44
High School	35	33	32
Some College	33	37	30
College or Higher	42	41	17
<b>Race</b>			
White	40	31	29
Black	10	64	26
Hispanic	26	34	40
<b>Total</b>	35	36	29

moderates.<sup>23</sup> Further, even among blacks identifying themselves as any kind of conservative, only 30 percent felt the decision was fair compared to 84 percent of nonblack conservatives who felt it was fair. In addition, among those who “somewhat approved” of Bush, 45 percent of blacks thought the decision was fair compared to 86 percent of nonblacks.

When we examined certain political variables, such as partisanship, ideology, and Bush approval, we found the expected, substantial differences. Belief in the fairness of the Court’s decision in *Bush v. Gore* began at 79 percent for strong Republicans and dropped to 7 percent for strong Democrats. Strong partisans were much more likely to have an opinion than weak partisans. Independents who lean in favor of a party were the mirror image of each other with 57 percent of those who lean Republican believing that the decision was fair and 56 percent of those who lean Democratic believing that the decision was unfair. More or less the same trend appeared for ideology, with only 14 percent of extreme liberals but 79 percent of extreme conservatives believing the decision was fair. Self-described moderates, however, were much less likely to express an opinion, as 40 percent said they did not remember the decision.

Academic commentary in the wake of the Supreme Court’s decision predicted that the retrospective evaluation of *Bush v. Gore* would depend on the success of the Bush presidency. As Judge Richard Posner summarized his views, “My guess (and not only mine) is that history’s verdict on *Bush v. Gore* will depend significantly, though improperly, on the success of Bush’s presidency” (2001, 222). In our survey, 39 percent said that they approved of Bush and

TABLE 3.2. *Party, Ideology, Bush Job Approval, and Opinion on Bush v. Gore (%)*

	Fair	Unfair	Don't Remember
<b>Party</b>			
Strong Republican	79	4	17
Not Strong Republican	57	11	32
Leans Republican	57	13	29
Leans Democrat	14	56	29
Not Strong Democrat	22	45	33
Strong Democrat	7	70	23
<b>Ideology</b>			
Extremely Liberal	14	74	12
Liberal	16	58	26
Slightly Liberal	14	66	20
Moderate	24	36	40
Slightly Conservative	55	18	27
Conservative	66	12	22
Extremely Conservative	79	5	16
<b>Bush Approval</b>			
Strongly Disapprove	10	69	21
Disapprove Somewhat	26	31	43
Approve Somewhat	59	11	29
Strongly Approve	75	5	20
<b>Total</b>	35	36	29

61 percent said they disapproved. Among those with an opinion on *Bush v. Gore*, the correlation was quite strong ( $r = 0.65$ ) between Bush approval and belief in the fairness of *Bush v. Gore*. Only 10 percent of those who strongly disapproved of Bush's job performance considered the decision fair, whereas 75 percent of those who strongly approved of the Bush presidency considered it fair. Among the group voicing an opinion on *Bush v. Gore*, 87 percent of those who approved of Bush thought the decision was fair compared to only 24 percent of those who disapproved of Bush.

When we controlled for all the relevant demographic and political variables, we found that, in fact, approval of the Bush presidency was the most powerful factor influencing one's attitude concerning the fairness of the *Bush v. Gore* decision – even independent of party and ideology.<sup>24</sup> Table 3.3 presents ordinary least squares (OLS) and logit results of the multivariate analysis limited to those in the sample who had an opinion on *Bush v. Gore* (that is, excluding those who said they did not remember). Our model fits very well – we had an R-squared of more than 0.52.<sup>25</sup> In addition to Bush approval, party was significant in both the OLS and logit models at the 0.01 confidence level. Race (being black) and ideology were significant at the 0.05 confidence level for the OLS

TABLE 3.3. OLS and logit regressions predicting opinion on fairness of the Bush v. Gore decision

	(OLS Regression)	(Logit Regression)
	<i>Bush v. Gore</i> Fair	<i>Bush v. Gore</i> Fair
Age	-0.013 0.011 (-0.36)	-0.031 0.093 (-0.33)
Least Educated to Most Educated	-0.003 0.017 (-0.10)	0.027 0.137 (0.20)
Black	-0.088** 0.045 (-2.98)	-1.024* 0.416 (-2.46)
Strong Republican to Strong Democrat	-0.242*** 0.015 (-4.65)	-0.466*** 0.116 (-4.02)
Extremely Liberal to Extremely Conservative	0.143** 0.014 (3.20)	0.303* 0.122 (2.49)
Bush Approval	0.419*** 0.021 (9.41)	1.238*** 0.152 (8.15)
Constant	0.364*** 0.098 (3.71)	-0.778 0.779 (-1.00)
N	718	718
R <sup>2</sup>	0.5271	

Standardized OLS coefficients; Robust standard errors underneath for OLS regression (linearized standard errors for logit regression); *t* statistics in parentheses.

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

model; for the logit model, they were significant at the 0.10 confidence level. In Figure 3.1, we graph the predicted probabilities showing how opinion on the fairness of the *Bush v. Gore* decision varies between those who approved of Bush versus those who disapproved of his presidency.<sup>26</sup>

We tested specifications of the model with other commonly used demographic variables like Southern residence, religious service attendance, gender, marital status, income, born again Christianity, knowledge, and political interest, among others.<sup>27</sup> Inclusion of these variables did not alter our conclusions.<sup>28</sup> We also estimated a regression that included measures of confidence in governmental institutions. We found that a variable that we created through principal component analysis from the questions measuring respondents' confidence

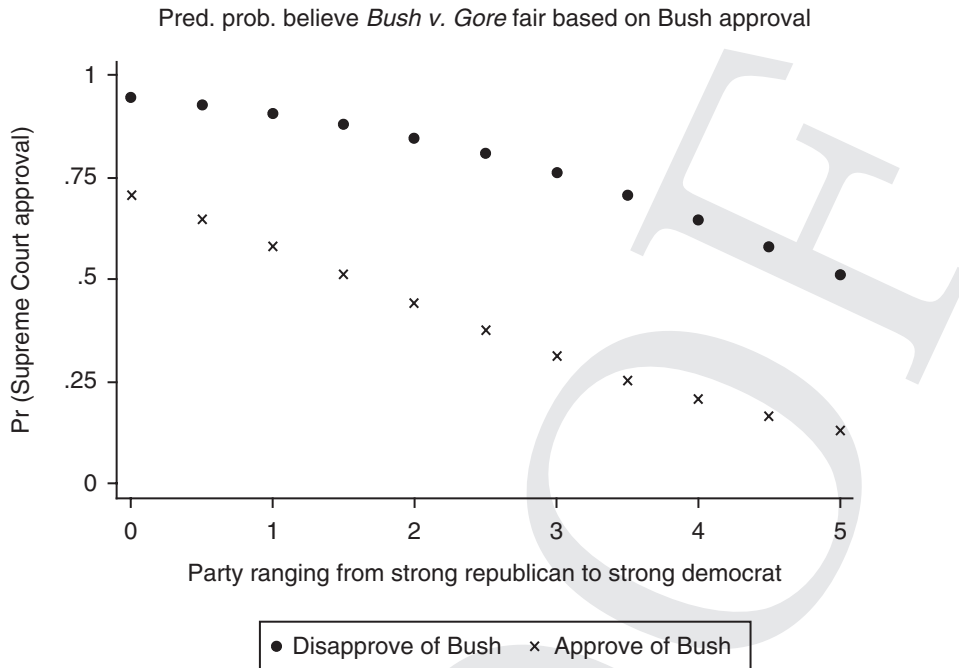


FIGURE 3.1. Predicted probabilities showing the effect of Bush approval on opinion on *Bush v. Gore*.

in the military, church, and corporations was significant.<sup>29</sup> Inclusion of the confidence factors did not, however, alter the significance of party, ideology, Bush approval, and race.<sup>30</sup>

To test the robustness of our results, we confirmed the analysis by ordered logit and multinomial logit that either included or excluded those in the survey who did not express an opinion.<sup>31</sup> Although our results are generally consistent, there were some minor differences. For instance, race did not reach significance in the ordered logit when using a three-stage dependent variable with the order being “fair,” “don’t remember,” and “unfair.”<sup>32</sup> This is probably due to the fact that the effect of race varies between respondents who expressed an opinion on the fairness of the *Bush v. Gore* decision and the respondents who said they “don’t remember.” Our results in the multinomial logit confirmed this. In that analysis, race was not significant for “don’t remember” with “fair” or “unfair” as the reference category (or vice versa), but it was significant for “unfair” with “fair” as the reference category (or vice versa). Thus, this means that race probably does not really matter, as differentiating between respondents who “don’t remember” and respondents who hold an opinion on the case’s polarization along racial lines may only occur between those who hold opinions on the fairness of the decision. Of course, this result was consistent with what we found in the cross-tabulations. Our multinomial logit analysis also confirmed the fact that age and education were significant for “don’t remember” with



“fair” or “unfair” as the reference category but not for the “unfair” or “fair” variable. Finally, ideology was significant for the variable capturing respondents expressing an opinion on *Bush v. Gore*, but it was not significant for the variable encompassing respondents who did not remember.

The data attest to the continuing polarization in opinion over *Bush v. Gore*. Partisanship, ideology, and especially approval of President Bush’s job performance all point to the same result: Democrats and liberals still find the decision unfair while Republicans and conservatives still consider the decision fair. Further, blacks felt that the decision was unfair, even more so than they did ten years prior. That the same lines of cleavage persisted ten years later is not all that surprising.<sup>33</sup> Consistent with Brickman and Peterson (2006), the cues that underlie the information environment today concerning opinion on *Bush v. Gore* are very similar to 2000. Further, there has been no real change in elite opinion regarding *Bush v. Gore*. Our results also lend support to the Franklin and Kosaki (1989) claim that rather than the Court being a leader on public policy, Court decisions can sometimes harden preexisting issue preferences and exacerbate long-standing intra- and intergroup differences on policy matters.

#### THE LINGERING EFFECT OF *BUSH V. GORE* ON APPROVAL AND CONFIDENCE IN THE SUPREME COURT

We now turn to the more controversial findings of our survey concerning the relationship between attitudes toward *Bush v. Gore* and those toward the Supreme Court today. We came to this question expecting to support the conventional wisdom that this particular decision has had no lasting effect on attitudes toward the Court. Given the upheavals of the past decade – a terrorist attack, two wars, a devastating hurricane, the Great Recession, and a historic presidential election – we expected a ten-year-old event, even if dramatically significant at the time, to fade in importance in affecting public opinion toward anything, including the Supreme Court. Add to these events the substantial turnover in the Court’s membership over this period, and we expected that whatever one might have thought of the decision at the time, it should not have a continuing effect on one’s assessment of the current Court. However, the data suggest that, even when controlling for partisanship and other factors, attitudes toward *Bush v. Gore* have a small effect on approval and confidence in the Supreme Court – even if the effect was relatively small.

*Bush v. Gore*’s effect was not evident from cross-tabulations or correlations, however. To measure approval, we asked, “Do you approve of the job the U.S. Supreme Court is doing?” (The same question was also asked regarding President Obama and Congress). Of the 994 respondents who answered the question concerning job approval of the Court, 5 percent said that they “strongly approved,” 56 percent said “approved somewhat,” 31 percent said “disapproved somewhat,” and only 8 percent said “strongly disapproved.”<sup>34</sup> To measure confidence, we stated, “below is a list of some institutions” (including

TABLE 3.4. *Perceived Fairness of the Bush v. Gore Decision and Job Approval of the Court (%)*

Attitude Toward <i>Bush v. Gore</i>	Strongly Approve	Somewhat Approve	Somewhat Disapprove	Somewhat Disapprove
Fair	7	57	28	8
Unfair	4	56	31	9
Don't Remember	4	54	34	8
Total	5	56	31	8

TABLE 3.5. *Perceived Fairness of the Bush v. Gore decision and confidence in the Court (%)*

Attitude Toward <i>Bush v. Gore</i>	Great Deal of Confidence	Some Confidence	Hardly Any Confidence
Fair	22	61	17
Unfair	19	64	16
Don't Remember	18	64	18
Total	20	63	17

the military, the Court, Congress, church, corporations, and the president) and we asked respondents to label whether they felt a “great deal of confidence,” “some confidence,” or “hardly any confidence.”<sup>35</sup> With respect to the Supreme Court, among those answering the question, 20 percent said that they had a “great deal of confidence,” 63 percent said that they had “some confidence,” and 17 percent said that they had “hardly any confidence.”<sup>36</sup> Tables 3.4 and 3.5 display the uninteresting (but nevertheless revealing) cross-tabulations between opinion on *Bush v. Gore* and approval or confidence in the Court. When we look at the cross-tabulations for both sets of questions we find that regardless of one’s opinion or non-opinion concerning the decision, the basic breakdown appeared to be the same. Further, the correlation was approximately zero between attitudes as to the fairness of the decision and approval and confidence in the Court. The results from the cross-tabulations and correlations caution us not to overstate the independent significance of *Bush v. Gore*. Whatever the multivariate analysis tells us, we can be confident that other variables have a stronger aggregate effect on Court approval and confidence than *Bush v. Gore*.

We turn now to our multivariate analysis to see what factors influence Court approval and confidence. We tested two dependent variables: approval of the Supreme Court and confidence in the Supreme Court. For the OLS regressions, we tested specifications using both the dichotomous and four-stage versions of the approval variable, though in Table 3.6 we report results using only the

dichotomous version of the approval variable; in the logit regressions, we used the dichotomous version of the variable. We recoded the confidence variable so that 1 equaled only those respondents who expressed a “great deal of confidence” in the Supreme Court. We coded respondents who said that they had “some confidence” or “hardly any confidence” as 0.<sup>37</sup>

We also tested a number of independent variables that other scholars have found to be predictors of Supreme Court approval or confidence. In particular, we might expect approval of and confidence in other institutions (particularly Congress) to have a powerful effect on approval of and confidence toward the Court. We found that the correlation in the CAS between approval of the Court and that of Congress and the president is 0.36 and 0.29 respectively, and between confidence in the Court and in Congress and the president is 0.40 and 0.35 respectively, a finding consistent with the scholarly literature on the topic.<sup>38</sup> Specifically, we constructed indexes for the approval and confidence variables through principal component analysis. “Congress and President Approval Factor” was a factor created through principal component analysis using questions on congressional and presidential approval.<sup>39</sup> The principal component analysis on the confidence variables yielded two factors. “Confidence Factor 1” loaded principally on the military, churches, and corporations while “Confidence Factor 2” loaded primarily on Congress and the president.<sup>40</sup> In addition to confidence, we also included demographic variables commonly used in regressions. Scholars have found race to be an important predictor of attitudes toward the Court as blacks generally evince less support for the Court than nonblacks (Caldeira and Gibson, 1992; Gibson et al., 2003b). The conventional wisdom also dictates that variables like age, education, ideology, party, and congressional and presidential approval have an important impact in determining opinion toward the Court (Murphy, Tanenhaus, and Kastner, 1973). Although not reported here, we did statistical analysis on other specifications using other demographic variables and we found that our results did not differ.<sup>41</sup>

Most important, we also tested for the independent significance of other constitutional decisions in predicting Court approval and confidence. We were most interested, of course, in assessing the impact of *Bush v. Gore* on measuring approval and confidence in the Court ten years later. We also included a four-stage variable approval of *Roe v. Wade* to control for the fact that maybe *Bush v. Gore* only reached significance because it was serving as a proxy for the polarization of public opinion on constitutional issues.<sup>42</sup> In other specifications not reported here, we tested for the independent significance of other policy areas, including gun rights, the Second Amendment, gay rights, the death penalty, detainee rights, free speech, and affirmative action, among others.<sup>43</sup> Hardly any of these other areas showed up as significant.<sup>44</sup> We also tested whether respondents’ knowledge of and agreement/disagreement on the outcomes of recent Supreme Court decisions mattered.<sup>45</sup> We created new variables based on whether respondents had knowledge of those decisions and, in turn,

if they agreed or disagreed with the Court's ruling. Depending on the specifications, some of the variables turned out to be significant, but inclusion of these variables did not alter our general conclusion on *Bush v. Gore*.<sup>46</sup>

Table 3.6 reports the OLS and logit results of regressing the dichotomous versions of the dependent variables – Supreme Court approval and Supreme Court confidence – on the independent variables. We find that approval or confidence in other institutions, particularly that of Congress and the president, had a very important impact on Supreme Court approval and confidence.

Most relevant to our findings is the fact that the variables measuring opinion toward *Bush v. Gore* consistently reached significance, particularly for Supreme Court approval. Indeed, the “unfair” dummy variable was significant to the 0.01 confidence level for the approval dependent variable. In Figures 3.2 and 3.3, we show the predicted probabilities of *Bush v. Gore* and *Roe v. Wade*, respectively, for our dichotomous approval dependent variable for different levels of the Congress and presidential approval variable. We constructed these graphs using the dichotomous version of the *Bush v. Gore* and *Roe v. Wade* variable for ease of explanation.<sup>47</sup> Comparing the two graphs, we see how comparatively *Bush v. Gore* appears to have a bigger relative effect than *Roe*. The results for the confidence dependent variable are a little different if we switch the way we measure *Bush v. Gore*. While *Bush v. Gore* was significant when we measure it using two dummy variables (“unfair” and “don't remember” with “fair” as the reference category), it just barely failed to reach significance if we only used the dichotomous “fair” versus “unfair” version of the variable.

We need not debate whether “approval” and “confidence” accurately capture the notion of “diffuse” support or if it merely gauges “specific” support over the long term. Either finding is interesting (and unexpected) for us. We expect that the effect of the decision will fade over the long term, in any event, as our discussion of the “don't remember” category attests. Nevertheless, attitudes toward a ten-year-old decision seem to have some lingering predictive effect on current attitudes toward the Court.

This effect, however, was small, and our models did a mediocre job of capturing the variance in respondents' attitudes toward the Court. Even with the many variables we included, we only captured about 20 percent of the variance in approval or confidence in the Court. Given the robustness of models that predict presidential and congressional approval, the inadequacy of certain families of variables to predict approval and confidence toward the Court is worth noting. Not only does opinion on *Bush v. Gore* have a small effect on attitudes toward the Court, but few variables other than generic attitudes toward other institutions seem to carry much weight in regressions.<sup>48</sup> For instance, contrary to what we found in Table 3.3 concerning the importance of race in predicting attitudes toward *Bush v. Gore*, the race variable failed to reach significance in the regressions predicting Supreme Court approval and confidence. This remained the case when we tested for interaction effects, including interaction effects between *Bush v. Gore* and race. Opinion on *Bush v. Gore* appears to

TABLE 3.6. OLS and Logit Regressions Predicting Opinion on Approval of and Confidence in the U.S. Supreme Court

	(1)	(2)	(3)	(4)
	OLS Regression – Supreme Court Approval	Logit Regression – Supreme Court Approval	OLS Regression – Great Deal of Confidence in Supreme Court	Logit Regression – Great Deal of Confidence in Supreme Court
Age	0.031 0.012 (0.79)	0.045 0.057 (0.79)	0.039 0.009 (1.06)	0.107 0.068 (1.57)
Least Educated to Most Educated	0.080* 0.019 (2.06)	0.186* 0.093 (2.00)	0.032 0.015 (0.84)	0.176 0.114 (1.54)
Black	0.063 0.056 (1.70)	0.589 0.352 (1.67)	-0.063 0.049 (-1.63)	-0.653 0.415 (-1.58)
Strong Republican to Strong Democrat	0.078 0.018 (1.26)	0.113 0.089 (1.26)	-0.045 0.014 (-0.78)	-0.087 0.111 (-0.78)
Extremely Liberal to Extremely Conservative	0.069 0.017 (1.29)	0.112 0.086 (1.30)	0.035 0.014 (0.65)	0.043 0.111 (0.38)
Bush v. Gore Unfair Dummy	-0.198*** 0.053 (-3.82)	-1.041*** 0.290 (-3.60)	-0.130* 0.045 (-2.39)	-0.864* 0.343 (-2.52)
Don't Remember Bush v. Gore Dummy	-0.145** 0.049 (-3.23)	-0.813** 0.258 (-3.15)	-0.125** 0.037 (-3.06)	-0.950** 0.290 (-3.28)
Disagree with Roe v. Wade (four-stage)	-0.029 0.018 (-0.67)	-0.063 0.091 (-0.69)	-0.095* 0.016 (-2.06)	-0.291* 0.128 (-2.28)
Bush Approval	0.093 0.025 (1.82)	0.226 0.127 (1.78)	-0.076 0.020 (-1.54)	-0.230 0.157 (-1.47)
Congress and President Approval Factor	-0.405*** 0.020 (-9.64)	-0.964*** 0.117 (-8.21)		
Confidence Factor 1			0.256*** 0.016 (6.46)	0.952*** 0.145 (6.57)
Confidence Factor 2			-0.392*** 0.019 (-8.13)	-1.202*** 0.153 (-7.86)
Constant	0.424*** 0.146 (3.45)	-0.384 0.613 (-0.63)	0.296** 0.091 (3.24)	-1.300 0.762 (-1.71)
N	941	941	928	928
R2	0.1474		0.2133	

Standardized OLS coefficients; Robust standard errors underneath for OLS regression (linearized standard errors for logit regression); t statistics in parentheses.

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



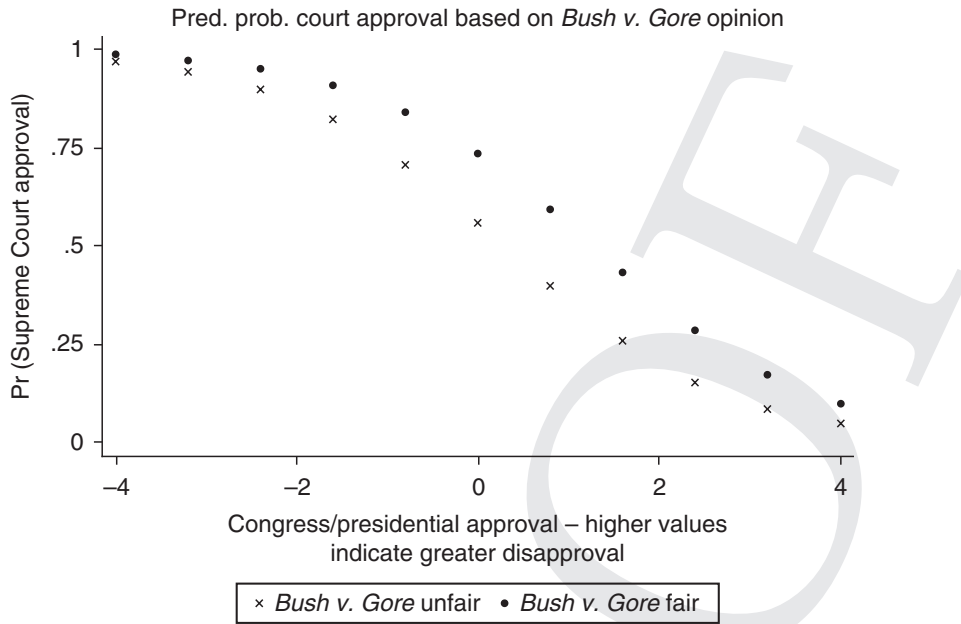


FIGURE 3.2. Predicted probabilities showing the effect of *Bush v. Gore* opinion on Supreme Court approval.

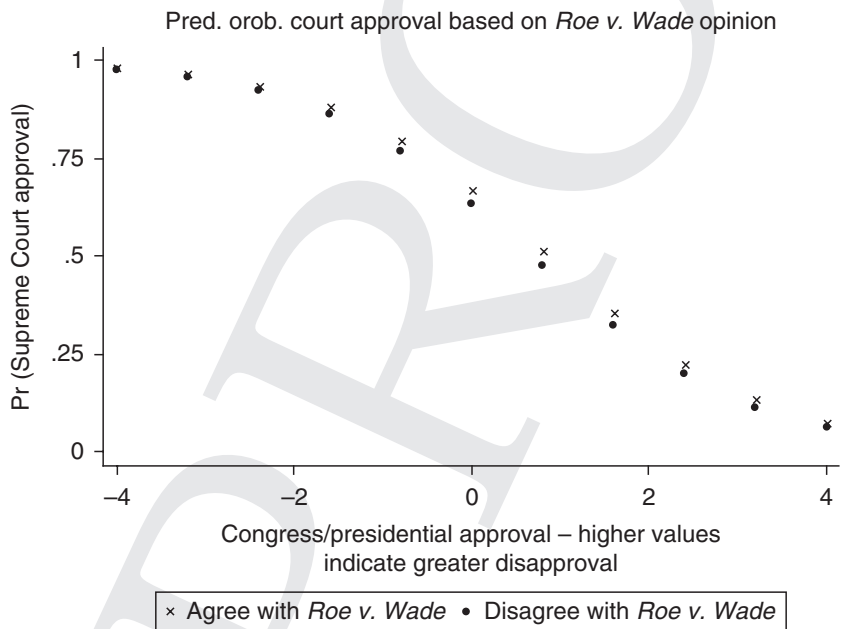


FIGURE 3.3. Predicted probabilities showing the effect of *Roe v. Wade* opinion on Supreme Court approval.

be polarized on the basis of race, but this racial divide did not carry over to blacks' approval of or confidence in the Supreme Court.

Even if the effect of attitudes toward *Bush v. Gore* were more substantial, several avenues of interpretation are possible. Perhaps the effect of the *Bush v. Gore* variable has nothing to do with the decision itself. Attitudes expressed toward the decision could merely serve as a proxy for some omitted variable that captures some version of extreme partisanship. However, we controlled for partisanship, ideology, and presidential approval in many different ways and the effect remained. Perhaps attitudes toward the decision reflect some special brand of partisanship with respect to judicial decision making, also not picked up by generic partisanship or attitudes toward other specific decisions. Although that is possible, the statistical significance of *Bush v. Gore* was not affected when we included other variables concerning the proper modes of constitutional interpretation.<sup>49</sup>

Of course, question wording and order can also affect results, as they do in any survey. Placing a certain question prior to another question could “cue” respondents to call to mind certain considerations that could then color their responses (Zaller, 1992). The 2010 survey first asked respondents to opine on their approval of President Obama as well as their level of confidence in various institutions, including the Supreme Court. Then, after asking a series of questions concerning their opinion on policy issues and their knowledge of recent Supreme Court decisions, the survey queried respondents on whether they approved of the Bush presidency, Congress, and the Supreme Court. Toward the end of the survey, we questioned respondents on their opinion on *Bush v. Gore*. We feel, however, that question wording and order had a minimal impact on our results. One could argue that asking respondents to opine on *Bush v. Gore* shortly after asking them about whether they approve of the Bush presidency may have caused respondents to more easily call to mind their feelings about President Bush. However, we also asked the same respondents in 2009 to rate their feelings on President Bush.<sup>50</sup> When we used the 2009 version of the variable in the regression predicting perceived fairness of the *Bush v. Gore* decision, we got the same results as we did using the 2010 Bush approval variable: in both, Bush approval was the most substantively important factor predicting opinion on *Bush v. Gore*. We also do not think that asking respondents their opinions on various issues altered views on institutional approval to a great extent. Ansolabehere and Jones (2010) found little evidence of simultaneity between issue placement and preferences and institutional approval. Further, we asked about institutional approval and confidence in different parts of the survey. Finally, we might add that Tourangeau, Couper, and Conrad (2004) found that in surveys conducted online, any order or context effect disappeared when questions appeared on different screens.

Finally, some have expressed to us their concern that the causal order may in fact vary; that is, respondents' approval of or confidence in the Supreme Court may determine how they react to the *Bush v. Gore* decision. Indeed, the

relationship between the two is dynamic and interrelated and, as many scholars have found, it is quite difficult to disentangle the two concepts (Caldeira and Gibson, 1992; Gibson et al., 2003a, 2003b). Analyzing data in the immediate aftermath of the decision, Gibson and colleagues found in their two-stage least squares analysis that “institutional loyalty influences judgments of the fairness of the decision in *Bush v. Gore*, but not vice versa” (2003b, 551). Although we do not discuss the results here, our preliminary work doing two-stage least squares analysis indicates that causal order does not appear to be something that would seriously undercut our findings on the relationship between *Bush v. Gore* and public approval of and confidence in the Supreme Court.

#### CONCLUSION

More than ten years after *Bush v. Gore*, scholars still debate the wisdom of the decision and its lasting impacts. Surprisingly, however, in the nearly decade and a half since, few pollsters have surveyed public opinion on this unique episode in the Court’s history. Our survey allowed us to capture American public opinion on this important decision, thereby enabling us to contribute to the debate on how the Court shapes public opinion. In a sense, our results are not all that surprising. We found that the same factors that polarized opinion on *Bush v. Gore* among the American public in 2000 – namely race, party, ideology, and Bush approval – still polarize opinion on *Bush v. Gore* today – at least among those who still share an opinion on the case. This is a result we expected to find because of the fact that the American public still views *Bush v. Gore* through the same political and racial lens. This result, of course, is also consistent with the findings by numerous scholars writing in the two or three years after *Bush v. Gore* (Gibson et al., 2003a, 2003b; Kritzer, 2001; Mate and Wright, 2008; Price and Romantan, 2004).

The lingering effect of the decision on attitudes toward the Court (if that is what we have uncovered) is still a bit of a surprise and marks a departure from the findings from the few scholars who have done any analysis of the longer-term impact of *Bush v. Gore* (Gibson et al., 2003a, 2003b; Mate and Wright, 2008). In part, the difference between our findings and those of others lies in the nature of our dependent variable. In any event, it is still important to ponder why *Bush v. Gore* seems to have at least some effect on Supreme Court approval and confidence so many years later – independent of party and ideology. Perhaps *Bush v. Gore* destroyed the faith of some in the Supreme Court and reinvigorated it for others. It still may define the institution in the minds of some share of the population. As such, it stands apart from most decisions, the salience of which quickly dissipates and produces no long-lasting effect. Indeed, *Bush v. Gore* is a unique test case precisely because, unlike cases on abortion or gay rights issues, there have been no intervening cases in the meantime by which the public can reignite its attitudes toward the controversial

issue. As such, it makes it impossible to compare directly how *Bush v. Gore*'s effect differs from that of other controversial decisions.

The “long-lasting effect” we may have uncovered is probably short-lived, however. The large share of the population – particularly young people – who respond that they do not remember the decision cautions that this effect may be generationally specific. In ten more years we should expect an even smaller share of the population to remember and have opinions on the case. When we reassess attitudes on *Bush v. Gore* another decade from now, it will have faded further in the memory of those who focused on it in 2000 and will be a curiosity of history for the generation that learns about it for the first time.

### Notes

- 1 Caldeira and Gibson did not totally discount that changes in “diffuse” support could occur; rather, they ascribe any dissonance to a “wholesale shift in style” of the Court rather than “short-term disagreements with the Court’s policy” (1992, 659). This could occur, for instance, during periods of upheaval or when the Supreme Court bases its decision on the “pursuit of policy objectives” rather than legal principles. Further, Caldeira and Gibson found that opinion leaders – in contrast to the mass public – tend “to link support for the Supreme Court to the satisfaction of specific policy preferences” (1992, 636).
- 2 Specifically, Gibson and colleagues (2003b) measured “diffuse” support through a series of questions concerning the Supreme Court, such as whether respondents trust the Court, whether they think we should do away with the Court, and so forth. Higher scores indicated greater institutional loyalty toward the Court.
- 3 In a regression with a factor comprising “loyalty to the Supreme Court” as the dependent variable, Gibson and colleagues (2003b) found variables that reflected various democratic norms, affect for Bush, awareness of the Court, knowledge of the Court, and race to be statistically significant.
- 4 For instance, scholars have concluded that public support for the Court varies on the basis of attributes like race (Caldeira and Gibson, 1992); partisanship/ideology (Dolbeare and Hammond, 1968; Murphy, Tanenhaus, and Kastner, 1973); issue positions (Murphy and Tanenhaus, 1968); political activism (Adamany and Grossman, 1983); political sophistication and attentiveness (Caldeira and Gibson, 1992); status as an elite (Beiser, 1972); religion (Franklin and Kosaki, 1989); education (Casey, 1974); age (Kessel, 1966; Murphy and Tanenhaus, 1968); social status (Casey, 1974); attitudes toward other governmental institutions (Caldeira and Gibson, 1992); or even how the decision was framed in the first place (Nicholson and Howard, 2003).
- 5 Likewise, Nicholson and Howard (2003) found that *Bush v. Gore* polarized public opinion concerning confidence in the justices themselves. They also found that “diffuse” support erodes if a decision is framed in such a way so as to make clear the decision’s ramifications.
- 6 Specifically, Mate and Wright found that while blacks still were more likely than whites to think that the decision was unfair, the “extra negativity engendered by the decision” in 2000 had all but evaporated by 2004 (2008, 346). They also found that the role of partisan identification and ideology had unexpectedly reversed with

- Democrats and liberals actually being more supportive of the Court in 2004 than they were prior to the *Bush v. Gore* decision.
- 7 Specifically, it employed a rolling cross-sectional design that ran from December 1999 through mid-January 2001, including interviews with more than 58,000 respondents. There was sufficient variation in both periods to allow us to make comparisons, but because it was not a panel study there could be some differences between the two groups that our analysis might not capture.
  - 8 Less than 1 percent did not answer (NAES, Question CS24, December 13, 2000–January 19, 2001). All numbers given for the NAES survey are rounded to the nearest whole number.
  - 9 Another question asked respondents if they approved of the decision “stopping and reviewing [the] Florida recount.” Of those who answered, about 36 percent “strongly approved,” 17 percent “somewhat approved,” 13 percent “somewhat disapproved,” and 30 percent “strongly disapproved” (NAES, Question CS16, December 11–19, 2000). A similar question with slightly different wording asked only after the decision queried respondents whether they approved of the Court’s action declaring the Florida recount unconstitutional. Thirty-six percent said they “strongly approved,” 15 percent said they “somewhat approved,” 11 percent said they “somewhat disapproved,” and 34 percent said they “strongly disapproved” (NAES, Question CS20, December 13, 2000–January 19, 2001).
  - 10 Another 6 percent answered that they did not know (NAES, Question CS23, December 11–19, 2000).
  - 11 The wording was a bit different for both of these questions. NAES, Question CS17, asked on December 11–12, 2000, gave respondents more choices, as it allowed respondents to answer “very likely,” “somewhat likely,” “not too likely,” and “not likely,” whereas NAES, Question CS21, asked December 13, 2000–January 19, 2001, asked respondents to answer yes or no to whether they would accept the Supreme Court decision on the recount as the final word. Further, for NAES, Question CS17, 2 percent did not know and 1 percent did not answer. For NAES, Question CS21, 3 percent did not know and less than 1 percent did not answer.
  - 12 NAES, Question CS18, December 11–12, 2000.
  - 13 The question, NAES, Question CS22, was phrased this way from November 29–December 12, 2000. After the decision was announced (thus from December 13, 2000 to January 19, 2001), the first part of the question was reworded: “How much confidence do you have that the U.S. Supreme Court dealt fairly...”
  - 14 Although not reported here, we did cross-tabulations of many of the NAES questions to see how opinion changed before and after the decision.
  - 15 Similarly, Brady (2000) looked at data from the 2000 National Election Study. One question asked respondents to rank the Supreme Court on a “feeling thermometer” from 1 to 1000. During the first twelve days in December 2000 before the opinion was announced, Brady found that the respondents’ feeling on the Court “dropped sharply by about five points,” with a noticeable 7.5 percent decline among Democrats, a 5.7 percent drop among Independents, but a 4.3 percent increase among Republicans.
  - 16 NAES, Question CM04, November 28, 2000–January 19, 2001.
  - 17 Nor to our knowledge have there been any surveys that allow researchers to assess *both* “specific” and “diffuse” support.



- 18 We also commissioned a Constitutional Attitudes Survey in July 2009 of 1,677 participants, but the questions on that survey did not ask about *Bush v. Gore*. For the 2010 survey, we queried 1,198 of the respondents from the 2009 survey. Knowledge Networks conducted both surveys. The codebook is available at [http://www.law.columbia.edu/null?&exclusive=filemgr.download&file\\_id=55737&rtcontentdisposition=filename%3DPersily%20codebook.pdf](http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=55737&rtcontentdisposition=filename%3DPersily%20codebook.pdf). Among other topics, the survey measured opinion about President Barack Obama's job performance, general knowledge and attitudes about American courts and other institutions, and attitudes about various policy and constitutional issues. The survey's findings on originalism were studied in another article published in the *Columbia Law Review* (see Greene, Ansolabehere, and Persily, 2011).
- 19 Question 604\_2010. For the remainder of this chapter we exclude those who refused to answer the question unless otherwise stated. As such, the percentages in the cross-tabulation tables were calculated excluding the small number of people who did not answer the respective questions.
- 20 These results differ from the results of the 2000 NAES where 54 percent said they felt the decision was fair, 40 percent said they felt the decision was unfair, 5 percent said they did not know, and less than 1 percent did not respond (NAES, Question CS24, December 13, 2000–January 19, 2001). Our results also differ from the conclusions of Gibson and colleagues (2003b), who in a poll taken in early 2001 found results consistent with the 2000 NAES that a majority (56.2%) thought the decision was fair, with 41.9 percent feeling it was unfair. They also found that 97.2 percent of respondents offered an opinion on the issue – a far cry from the close to 30 percent of respondents in the CAS survey who responded they “don't remember” or refused to answer.
- 21 By contrast, in 2000, it was actually the oldest cohort of Americans older than age sixty who were less likely to offer an opinion. According to the 2000 NAES, about 9 percent of respondents aged sixty and older answered “don't know” to the question concerning the fairness of the *Bush v. Gore* decision (NAES, Question CS 24, December 13, 2000–January 19, 2001). This contrasts with the 4–5 percent of respondents in the other age cohorts who answered “don't know.”
- 22 Again, we saw a similar pattern in the 2000 NAES but the numbers were not as dramatic. About 13 percent of those with less than a high school education answered “don't know” to the question concerning *Bush v. Gore*'s fairness compared with the 4–6 percent who answered that way in higher categories of education.
- 23 All of the percentages in this paragraph are only of people expressing an opinion on *Bush v. Gore*.
- 24 There was a high correlation between and among party, ideology, and Bush approval. Between party and ideology, the correlation was -0.63, between ideology and Bush approval it was 0.47, and between party and Bush approval it was -0.63. We thus looked at the variance inflation factors (VIF) to see whether multicollinearity clouded our results. All of the VIF values were less than three, with party, ideology, and Bush approval predictably having the highest values of 2.51, 1.85, and 1.77, respectively.
- 25 We also tested this model with various ways of measuring each of the independent variables. For instance, in the model we include in Table 3.3, race was measured as a dummy variable with black being 1 and nonblack being 0. We tested a specification where we included a dummy variable with white being 1 and nonwhite being

- o. The same variables remained significant, though; as expected, the coefficient on the race variable was smaller when we used the white dummy variable instead of the black dummy variable. The survey we conducted in 2010 also had a unique way of measuring partisanship. Respondents were first asked whether they were Democrat, Independent, or Republican (Question 7\_2010). Those who expressed a party preference were then asked whether they were strong or not strong partisans (Question 8\_2010, Question 9\_2010). The remaining individuals – those saying that they were Independent as well as those who said they were some other party, no party, or did not answer – were then asked whether they leaned toward the Democrats or Republicans (Question 10\_2010). From this data, we constructed a six-point scale going from strong Republican to strong Democrat. In 2009, we measured party differently because the question itself asked respondents to place themselves on a seven-point scale (Question partyid7). The correlation between the two measures of party was 0.89. We tried regressions using both measures and came out with consistent results.
- 26 For ease of explanation, we used the dichotomous version of the Bush approval variable (Question 599\_2010) in estimating the regression that is the basis for this graph.
- 27 Our 2009 and 2010 surveys had a number of knowledge questions. Questions 301–05 from the 2009 survey and Questions 520\_2010–523\_2010 from the 2010 survey inquired into respondents’ knowledge of various recent decisions of the Court. We constructed several knowledge variables adding up the responses to the questions and we also did principal component analysis of the knowledge questions. No matter how we tested it, we did not find knowledge to be significant in the *Bush v. Gore* regressions.
- 28 We also tested various interactions, including interactions between and among party, ideology, Bush approval, and race. Generally, it remained the case that the same values stayed significant, though there were some differences. For instance, when we put in an interaction term for black and party, black no longer remained significant, most likely because the effect of race was somehow intertwined with party. This of course was not unexpected. In our logit results, black also did not reach significance when we included an interaction between black and Bush approval. Further, although the same variables remained significant, we noticed slight changes in the substantive values of the variables when the insignificant interaction term was included in the regression. The R-squared remained generally in the 0.52–0.53 range whenever any interaction term was included. We also tested an interaction between age and education and found no difference in the results.
- 29 If instead we put in just the question on confidence in the military, church, or corporations individually, we found that confidence in church and corporations – but not the military – reached significance.
- 30 However, it did increase the R-squared from 0.5271 to 0.5457, and likelihood ratio tests done on unweighted regressions indicated that inclusion of the confidence variables yielded a better model fit.
- 31 To do this, we created a dependent variable that was ordered “fair,” “don’t remember,” and “unfair.” Although it was not strictly a linear progression going from each category to the next, to create a continuum it seemed most logical to put the “don’t remember” response in the middle.

- 32 Black was also not significant in the ordered logit when we included interaction terms between and among party, ideology, black, and Bush approval.
- 33 Indeed, our regression results do not differ markedly from those of Gibson and colleagues (2003b) when they regressed various independent variables on opinion regarding fairness of the *Bush v. Gore* decision asked of 2001 respondents. Similar to our analysis, they found party, affect for Bush, and race to be statistically significant variables; they also found that awareness, variables that measured “perception of who won the national election,” and “perception of who won the Florida election” – variables not included in our survey – to be significant.
- 34 Question 601\_2010.
- 35 Question 501\_2\_2010.
- 36 About 5 percent and 2 percent of respondents, respectively, declined to give an answer to the questions on Supreme Court approval and confidence. In our 2009 survey, we asked respondents to opine whether they felt that the Supreme Court was “too conservative, too liberal or about right” (Question 8). Twenty-two percent said “too conservative,” 29 percent said “too liberal,” and 48 percent said “about right.”
- 37 We also tried the regressions using the three-stage variable as well as a variable where we recoded “hardly any confidence” as 1 and a “great deal of confidence” or “some confidence” as 0. Further, we tested specifications using as the dependent variable several approval/confidence variables created through principal component analysis. *Bush v. Gore* was significant in these other variations, except that it was not significant if the “hardly any” dummy variable served as the dependent variable.
- 38 Indeed, Caldeira (1986) and Price and Romantan (2004) found a positive linkage between confidence in the Court and confidence in other institutions. There are a number of reasons we might expect to see such a linkage. Some citizens might perceive the Court as part of the monolithic entity that is the federal government, viewing it as a single “governing coalition” (Caldeira and Gibson, 1992, 645). Approval and confidence may also reflect respondents’ attitudes toward the incumbents holding power in the other branches as well as be correlative of respondents’ general level of trust in institutions (Price and Romantan, 2004).
- 39 Specifically, we created the “Congress and President Approval Factor” using Questions 500\_2010 and 600\_2010.
- 40 We created “Confidence Factor 1” through a principal component analysis using Questions 501\_1\_2010, 501\_4\_2010, and 501\_5\_2010, measuring confidence in the military, church, and corporations, respectively; and we created “Confidence Factor 2” using Questions 501\_3\_2010 and 501\_6\_2010, measuring confidence in Congress and the president, respectively. Although we would like to derive measures of “generic” and “partisan” confidence, both factors probably point to latent partisan or ideological variables. To put the matter more specifically, confidence in the military, churches, and corporations probably points to ideological affinity with the Republican Party while confidence in the president and Congress probably points to latent attitudes toward the Democrats. In addition to a confidence factor, we used principal component analysis to create a variable of the two questions asking respondents whether they approved of the job that Congress and the president were doing. We used this “approval” factor as an alternative to the

- “confidence” factor in some specifications when Supreme Court approval served as the dependent variable.
- 41 As we did with the *Bush v. Gore* regressions, we tested the independent significance of Southern residence, religious services attendance, gender, marital status, income, born again Christianity, and political interest, among others.
- 42 Question 510\_2010.
- 43 Questions 201-18; Questions 511a-511f\_2010; Questions 512a-512f\_2010; Question 515\_2010; Questions 517\_1-517\_4\_2010; Question 519\_2010.
- 44 None of the other policy areas reached significance for the confidence dependent variable. For the approval dependent variable, questions concerning the death penalty, free speech, and gay rights reached significance.
- 45 As noted before, our survey asked a number of different questions in both 2009 and 2010 relating to respondents’ knowledge of recent Supreme Court decisions concerning eminent domain, the death penalty, detainee rights, gun rights, gay rights, free speech, criminal law, and governmental power. These were Questions 301-05 from the 2009 survey and Questions 520\_2010-524\_2010 from the 2010 survey.
- 46 For example, opinions on gun rights, the power of the Environmental Protection Agency to limit carbon omissions, and the power of the government to limit corporate free speech showed up as significant in some of the regressions with approval as the dependent variable.
- 47 For ease of explanation, we reestimated the logit regression in Table 3.3 using a dichotomous version of the *Bush v. Gore* and *Roe v. Wade* variables. The dichotomous version of the *Bush v. Gore* variable was coded 0 for “unfair” and 1 for “fair”; respondents answering “don’t remember” were not included. The regression results were consistent using either the dichotomous or dummy variables; we wanted to do a simple comparison graphically showing the larger perceived impact *Bush v. Gore* had on Court approval than *Roe* had and using the non-dichotomous versions of the variables would be too confusing. In addition to estimating the results using a dichotomous version of *Bush v. Gore*, we also tried specifications using different versions of dummy variables relating to the *Bush v. Gore* variable. For instance, we tried other specifications where we used “unfair” or “don’t remember” as the reference category, respectively.
- 48 We also tried some regressions that included variables created through principal component analysis based on questions measuring respondents’ attitudes on moral traditionalism (Questions 4a-4d), equalitarianism (Questions 3a-3f), and libertarianism (Questions pair a, pair b, pair c). Except for one of our egalitarian factors barely reaching significance, none of these variables proved important in our analysis.
- 49 We also included, in both factor form and as individual questions, variables that relate to respondents’ view of what it takes for a person to be a good Supreme Court justice (Questions 102a-102h), a battery of questions that Gibson and colleagues created themselves and that he found strongly correlates with institutional loyalty (Gibson and Caldeira, 2009a). We asked respondents to rate whether they felt that justices should 1) Strictly follow the law no matter what people in the country may want; 2) Feel empathy for the people involved in a case; 3) Protect people without power from people and groups with power; 4) Respect the will of the majority of people in the United States; 5) Stay entirely independent of the president and

Congress; 6) Follow his or her conscience or sense of morality; 7) Respect existing Supreme Court decisions by changing the law as little as possible; and 8) Uphold the values of those who wrote our constitution 200 years ago. While a few of these showed up as significant in some of the regressions, inclusion of these variables did not distract from our finding on the significance of *Bush v. Gore*.

- 50 In the 2009 survey, we asked respondents to rate their feelings on President Bush using a four-stage scale: “favorable,” “somewhat favorable,” “somewhat unfavorable,” or “unfavorable” (Question pa0002).

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