Loyalty over Fairness: Acceptance of Unfair Supreme Court Procedures

Miles T. Armaly[1] (iD)

Abstract

Evidence of procedural fairness leads individuals to support Supreme Court decisions, even ones with which they disagree. Yet, in some settings, unfair behavior is seen as acceptable, even praiseworthy, if it yields a pleasing outcome for one's group. The loyalty norm occasionally trumps the fairness norm, and group loyalty has taken on increasing importance in American politics. I use a nationally representative survey with an embedded experiment, and a convenience sample survey experiment, to relate group (i.e., partisan) loyalty and perceptions of (un)fair behavior to support for the Court. I find that when group concerns are unclear, individuals tend to punish the Court for unfair behavior. However, despite conventional wisdom regarding fairness and support, individuals fail to censure unfair behavior when their group benefits from the Court's impropriety. These effects hold when integrating preferences regarding specific case outcomes. Perceived unfair procedures do not universally harm evaluations of the Supreme Court.

Keywords

Supreme Court, group loyalty, procedural fairness, support

Public perception of fair U.S. Supreme Court procedures is strongly related to support for the judiciary and compliance with its decisions (Baird 2001; Gibson 1991; Lind and Tyler 1988; Tyler 2006). However, recent evidence indicates that commitment to certain moral norms—such as fairness and honesty—is rooted in, and can be suppressed by, group attachment (Hildreth, Gino, and Bazerman 2016; Waytz, Dungan, and Young 2013). Although outright cheating is seen as unethical and an unacceptable moral failure (Gneezy 2005), there are instances where ordinary individuals value loyalty (Hildreth and Anderson 2018) and expect favoritism (Bian, Sloane, and Baillargeon 2018). Specifically, unethical acts that are perceived as stemming from loyalty are viewed more positively than ethical acts that are disloyal (Hildreth and Anderson 2018). A tension exists between fairness and loyalty (Waytz, Dungan, and Young 2013), and individuals can encounter a psychological dilemma when each norm is simultaneously primed. Due to the preeminence of group loyalty (Tajfel and Turner 1979), individuals may be willing to ignore violations of standard norms—like fairness—when their group benefits.

In light of evidence that loyalty can trump fairness, and on the immense—and growing—influence of group loyalty in American politics (e.g., Iyengar and Westwood 2015), I believe now is an appropriate time to reexamine the relationship between fairness and support for the Supreme Court. Great rifts between, and cohesion among,

groups in the United States have occurred in recent decades, such that individuals increasingly align with the political in-group and increasingly avoid and dislike the out-group (Huddy, Mason, and Aarøe 2015; Iyengar, Sood, and Lelkes 2012; Iyengar and Westwood 2015). Group members feel pride for conformity and shame for disloyalty (Suhay 2015). This Balkanization, and the motivations that accompany social identity-based polarization, provides fertile ground for loyalty to confront sociopolitical and moral norms like fairness.

This study sets out to determine whether individuals are willing to forgo fairness on the part of the Supreme Court when their group benefits. I take "fairness" to encompass a host of characteristics, like trustworthiness, ethicality, integrity, honesty, and believability. I ask whether individuals will accept Court procedures that violate these principles, provided that they view themselves as policy "winners." To find out, I conducted a nationally representative survey with an embedded experiment, as well as a convenience sample survey experiment. To confirm that the average American actually perceives the Court to be fair (an important first step, given the assertion

[1]The University of Mississippi, University, USA

Corresponding Author:
Miles T. Armaly, The University of Mississippi, 233 Deupree Hall, University, MS 38677, USA.
Email: mtarmaly@olemiss.edu

that shocks to such a belief should prove influential), I quantify such beliefs and determine their relationship to other constructs of normative and empirical interest. I find that individuals have coherent perceptions of the Court's fairness, that they believe the institution to be generally fair, and that fairness relates to other important characteristics (e.g., legitimacy and Court politicization) in the expected manner.

Then, to explicitly investigate willingness to forgo fairness in favor of loyalty, I use two experimental designs which build on one another. In the first experiment, I find that individuals punish the Court for unfair procedures under two conditions: (1) when they cannot determine whether the group (here, partisan) to which they are loyal benefits or is disadvantaged and (2) when they believe their group is disadvantaged. However, individuals whose group stands to benefit from the Court's unfair procedures fail to rebuke such behavior, which offers evidence for the central hypothesis that many will set aside fairness to promote favoritism, or in the name of loyalty. Finally, to place the effects of loyalty into greater context, I compare these effects to another powerful influence on Court evaluations: satisfaction with a particular decision. I find that results hold when considering outcome support and that some actually *increase* support when their group benefits.

These findings have normative implications for the Supreme Court. Preexisting positivity toward the judiciary is, at least partially, responsible for the Court's large stores of public support (Gibson and Caldeira 2009; Hansford, Intawan, and Nicholson 2018), and the Court is able to operate more freely when it is buttressed by public support (Clark 2009; Ura and Wohlfarth 2010). Yet, the evidence presented here indicates that positivity can be combated by loyalty's demand for favoritism. Generally, the greatest concern for the Supreme Court is the *loss* of support. It is also concerning if the Court maintains its support in the aggregate but is individually supported only by those benefiting from its unfairness. The micro-foundations of support matter for the macro-levels thereof.

A great number of studies examine procedural fairness (e.g., Gibson 1991; Lind and Tyler 1988; Mondak 1993; Tyler and Rasinski 1991), loyalty to a political group (e.g., Green, Palmquist, and Shickler 2004), and the role of group cues in support for the judiciary (e.g., Clark and Kastellec 2015; Nicholson and Hansford 2014). Yet, despite the radical tension between fairness and loyalty, few studies directly compare the two norms. Here, I assess loyalty and fairness in tandem—rather than considering each separately—to determine the relative influence of these factors on support for the Supreme Court. Thus, this study deviates from those that examine the link between either (1) support and procedural fairness or (2) support and party cues. In addition, I slightly deviate

from the partisan cues that have received great attention (e.g., Armaly 2018a) as, in this study, parties are not the source of the cue, but are included in the cue content.

Procedural Fairness and Group Loyalty

What happens when people think the Court is using unfair procedures? Conventional wisdom suggests that support for the institution and for specific decisions would decrease. Indeed, this hypothesis has been rigorously tested; though not the only influence on evaluations of the Court (e.g., positivity bias; see Gibson and Caldeira 2009), procedural fairness has a substantial influence on attitudes regarding the Court (Gibson 1989; Mondak 1993; Ramirez 2008). Even when disappointed with the Court's decisions, belief that the process has been fair relates to compliance with the decision (Baird 2001; Gibson and Caldeira 1995) and institutional support (Gibson 1991; Tyler 2006). Despite general adherence to fairness, and the well-established relationship between fair procedures and Court support, other social and moral norms may also influence support for the Supreme Court and its decisions. In particular, loyalty is a basic moral norm (Haidt 2007), influences political assessments (Iyengar, Sood, and Lelkes 2012), and is occasionally in direct conflict with fairness (Waytz, Dungan, and Young 2013). It is plausible that loyalty to one's political group may offset the robust influence of procedural fairness when it comes to Court support. Although the American public is uncommonly positive toward the judiciary (Caldeira and Gibson 1992; Gibson, Caldeira, and Baird 1998), positivity-based support may be no match for identity-based group loyalty. Some may trade fairness for favoritism.

Loyalty—or "the principle of partiality toward an object (e.g., group)" (Hildreth, Gino, and Bazerman 2016)—is important to consider when assessing attitudes toward the judiciary because members of the American mass public, now more than ever, view the political landscape in terms of "us" versus "them." Often, one considers herself, in terms of identity, a "Democrat" or "Republican" (Huddy, Mason, and Aarøe 2015), or in similarly divisive and mutually exclusive terms. Merely identifying with a group is sufficient to produce strong feelings about both the in- and out-group (Iyengar, Sood, and Lelkes 2012). Thus, loyalty is part and parcel of group identification.

Conformity to norms has long been understood as a way to demonstrate loyalty to a group and is an important aspect of one's social identity in its own right (Asch 1956; Tajfel 1970). In other words, norm conformity (or violation) is a function of group interactions and identification (DeRidder and Tripathi 1992; Suhay 2015). Even compliance with the law is a function of an individual's commitments to a

specific in-group (Nadler 2017), indicating that concepts that are integrally connected to procedural fairness and legitimacy (e.g., compliance) are deeply rooted in group norms. Importantly, more general norms are also a product of the group context (Hildreth and Anderson 2018; Hildreth, Gino, and Bazerman 2016), meaning the group context influences conformity to many types of norms, not just those that are group centric. These general norms—like fairness and honesty—are especially important for the purposes here, as they directly relate to evaluations of the judiciary (e.g., Baird 2001; Ramirez 2008). Thus, if an individual is confronted with unfair Court procedures, two important norms may underlie her reaction: fairness and group loyalty.

At its most basic, the fairness norm requires equal treatment. The fairness norm "typically dominates behavior" (Waytz, Dungan, and Young 2013, 1028), meaning it is often promoted over other considerations. When it comes to the Supreme Court, individuals are interested in maintaining fair procedures because balanced, deliberative bodies distribute not only the occasional policy victory, but also palatable losses (Baird 2001). Contrast this with other institutions, from whom losses are viewed as less fair and less acceptable (Hibbing and Theiss-Morse 1995, 2001). This theory bears out empirically; individuals are less supportive of Supreme Court behavior that is perceived to be strategic or self-serving—that is, procedurally unfair—in nature (Baird 2001; Gibson and Caldeira 2011).

While the fairness norm demands equal treatment, the loyalty norm demands favoritism. Thus, fairness and loyalty are clearly at odds. More importantly, traditionally paramount fairness may be "over-ridden in contexts that pit fairness against loyalty" (Waytz, Dungan, and Young 2013, 1028). This is especially true when resources are scarce, as is true with policy victory. Still, group-specific loyalty is required to rival fairness. In the absence of a group consideration, priming loyalty *fosters* ethical behavior (Hildreth, Gino, and Bazerman 2016). In other words, even if a specific group appeal is made, when one cannot ascertain whether her group stands to benefit or suffer from some unsanctioned behavior, she is likely to promote the ethical behavior and censure the unfair action (in keeping with the fairness norm). However, when group considerations are obvious, more loyal individuals are less committed to ethical behavior (Hildreth, Gino, and Bazerman 2016). Importantly, the decision to condemn unfair behavior is driven by fairness, but the decision to accept unfair behavior is motivated by loyalty (Waytz, Dungan, and Young 2013).

I derive the central premises in this paper from the understanding that, in certain circumstances, the fairness norm and the loyalty norm demand different responses. When group concerns are unclear, individuals should promote fairness (or rebuke unfairness), given the predominance of the fairness norm. When group concerns are clear, the direction of the favoritism will dictate the response. For individuals whose group is *dis*advantaged by unfair procedures, the norms do not produce cross-pressures; both fairness and loyalty should dictate the same response: reprove of the unfair procedures.

For individuals whose group is *advantaged* by unfair procedures, loyalty and favoritism demand opposite, cross-pressuring responses (support and rebuke of the unfairness, respectively). In this instance, previous work suggests individuals will prefer favoritism to fairness (Waytz, Dungan, and Young 2013). This could manifest as outright promotion of favoritism over fairness (e.g., an increase in support for the unfair action or actor), or as an offsetting of the generally negative effect of unfairness (e.g., a failure to decrease support for the unfair action or actor). I more carefully elaborate on these potential manifestations below. As this pertains to the judiciary, specifically, one may view unfair judicial procedures—like a lack of transparency, demonstrating favoritism in selecting relevant case facts, relying only on certain types of evidence, and so on—that aid her group as acceptable, even if she would reject those unfair procedures if group concerns were unclear.[1]

I wish to be clear that I do not believe that these are necessarily conscious cognitive processes. Indeed, individuals typically make near instantaneous decisions, and in certain instances accuracy goals (here, fairness) can be subsumed by directional goals (here, partisan loyalty) (see Lodge and Taber 2013). In other words, one may not *choose* to promote loyalty at the expense of fairness. Instead, it is more likely the case that one is motivated by partisanship (Taber and Lodge 2006), and this manifests as a snap-decision to discount the typically dominant fairness norm and, in so doing, uncritically promote partisan loyalty. When it comes to the Court, in some instances those snap decisions are guided by preexisting positivity (Gibson, Lodge, and Woodson 2014). In other instances—particularly where the Court is perceived as behaving in a politicized manner—those snap decisions are guided by political preferences (Woodson 2015).

Finally, I believe the relationship between Court support and group orientations is ripe for renewed investigation. If individuals fail to consider the Court an institution capable of conferring political benefits upon their group, there would be no tension between loyalty and fairness in evaluating the Court. However, increasing politicization of the Court—by its members, other political actors, and the media—may have altered the relationship between group loyalty and institutional support. For starters, partisan attachments play a role in evaluations of the judiciary (Armaly 2018a; Nicholson and Hansford 2014). And, there is reason to believe that it is now easier to conceive of the Court in partisan, or group, terms, meaning the

loyalty element is operational when individuals consider the judiciary.

First, people implicitly view the Court as a (slightly) political institution, even if they fail to express that belief (Hansford, Intawan, and Nicholson 2018). Moreover, the media now portrays the Court this way (Salamone 2018), which in turn influences perceptions of fairness (Ramirez 2008). Likewise, the Court is now portrayed more like the elected branches (Solberg and Waltenburg 2014). As Armaly (2018b) notes, overt politicking vis-à-vis the judiciary is the "new normal." This type of rhetoric can cue an individual as to which justices do, or do not, align with her identity, and to think of the Court in partisan terms. Comments like Justice Ginsburg calling Donald Trump "a faker," for instance, can make clear to a conservative/Republican that Ginsburg is more favorably disposed to liberal/Democratic politics, even without knowing anything about her decisions on the bench. Similarly, it may prime individuals to consider the Court in terms of the in-group and out-group. Indeed, Woodson (2015) shows when the Court is perceived as politicized, evaluation of the institution and its outputs are driven by whether the individual benefits from the Court. So, because the Court, the elected branches, and the media increasingly place the Court in partisan context (either explicitly or implicitly), it is no stretch to suggest that individuals do the same, and thereby consider Court outcomes as conferring group benefits.

Assessing Fairness

Before turning focus to the tension between fairness and loyalty and how it influences views of the Court, it is important to empirically assess the degree to which Americans believe the Court to be fair before moving forward. If only a small percentage—say, 10 percent—of individuals believed the Court to be fair, it would be difficult to suggest that individuals should be surprised by alleged impropriety. By determining general beliefs about the Court's fairness, subsequent analyses on fairness and loyalty can be better placed in context, as well as better placed within the literature on evaluations of the judiciary.

This study is, by no means, the first empirical investigation into the relationship between beliefs about fair procedures and support for the U.S. Judiciary. As such, other scholars have used various techniques to ascertain the degree to which ordinary citizens hold beliefs about the Court's fairness. For instance, Gibson (1989) asks whether people perceive the Court to (1) obtain all necessary information when making a decision, (2) consider multiple views, and (3) decide in a fair way. Baird and Gangl (2006) ask, "How fair do you think the process through which the Supreme Court justices reached this

decision was in this instance?" I take a broader view of fairness—in terms of measurement—and use questions that reflect multiple elements of the concept. Specifically, I adopt items from Reysen and Puryear (2014), who develop and validate a scale intended to measure the perceived honesty of some target individual.[2] I merely swap "the Supreme Court" for "this person" in each item.[3] I believe this approach is superior to other measurement strategies for several reasons. First, scales constructed with multiple items are generally of higher reliability (i.e., low in measurement error; Ansolabehere, Rodden, and Snyder (2008)). Second, I believe determining fairness beliefs independently of information about any particular case avoids problems that may arise in light of evidence by Woodson (2015), who shows that individuals perceive decisions, and decision procedures, in a more positive light when they like a case outcome.

To measure beliefs about the Court's fairness, I use Lucid, a survey platform which provides academic researchers with quota-based nationally representative samples from multiple survey partners (see Coppock and McClellan 2019). In February 2019, I surveyed a total of 1,001 U.S. adults; 500 are considered here, and the remainder are described later in this paper.[4] Sample demographic characteristics are available in the Supplemental Appendix. Table 1 lists the survey items used to construct the fairness scale. The items ask about the Court's believability (items 1 and 7), ethicality (2), integrity (3), propensity to tell the truth (4 and 6), honorability (5), honesty (8), and use of fair procedures (9). Each of these properties relates to a generalized form of fairness, or impartial, just behavior free from favoritism. Responses ranged from strongly disagree (1) to strongly agree (5). The items form a highly reliable scale (Cronbach's α = 0.93), and the scale explains a high percentage of the variance in the items (80%).
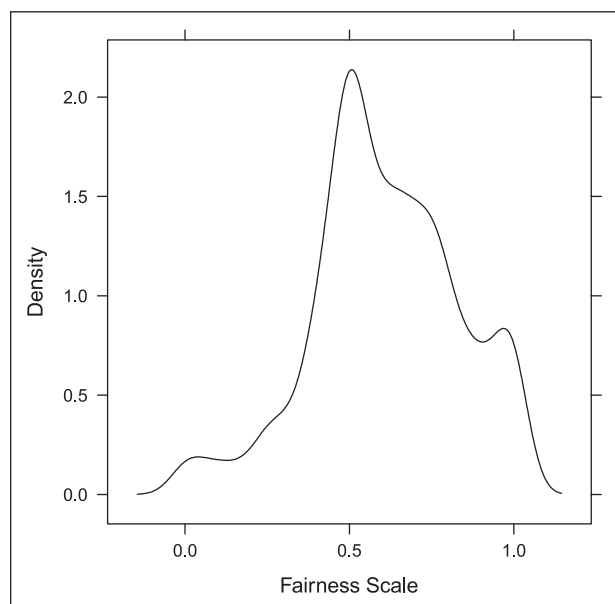
The distribution of the fairness scale—which is the average response to all nine items, and which has been rescaled 0–1—is represented via kernel density estimation in Figure 1. The distribution reveals that most people perceive the Court to be relatively fair, with both the mean and median at 0.61. More respondents believe the Court to be fair than unfair. This is encouraging for the Court. Moreover, even though a great number of people do not seem to consider the Court "extremely" fair, the average level of perceived fairness suggests that perceptions of unfair procedures should come as a surprise to many Americans. Again, if many people were unfazed by judicial unfairness, it would be difficult to contextualize studies that demonstrate meaningful effects of exposure to purported unfairness.

Here, I find that the average perception is that the Court is fair. Contrast this with the fairness perception of Congress, about whom I asked 297 respondents on a

Table 1. Fairness Scale Items, Summary Statistics, and Psychometric Properties.

	M (1–5)	Factor score
I believe what the Supreme Court says	3.37	0.77
The Supreme Court is not ethical (R)	2.55	−0.69
The Supreme Court has integrity	3.60	0.84
I trust the Supreme Court will tell the truth	3.46	0.83
The Supreme Court is honorable	3.59	0.79
The Supreme Court lies (R)	2.65	−0.78
The Supreme Court is not believable (R)	2.56	−0.76
The Supreme Court is very honest	3.34	0.79
The Supreme Court does not use fair procedures (R)	2.69	−0.70
Cronbach's α	0.93	
Proportion variance explained by first dimension	0.80	

(R) indicates reverse coded item.

Figure 1. Distribution of fairness scores.

separate survey.[5] People perceive Congress to be very unfair; its median fairness score is 0.36, which is statistically ($p < .05$) and substantively different than the same assessment of the Supreme Court. So, I feel comfortable proceeding with the assumption that Supreme Court fairness is relevant, particularly when compared with other institutions. That is, inasmuch as perceived fairness has long been considered an important property influencing attitudes toward the Court, this information allows us to empirically support claims that unfairness ought to influence individual assessments of the institution.[6]

Forgoing Fairness for Loyalty

Having determined that average citizens believe the Court to be fair, I move on to examine whether individuals will forgo fairness for policy benefits to their group. Again, the major premise of this paper is that individuals will forgo fairness when the group to which they are loyal is positively impacted. Though fairness prevails over loyalty when group concerns are unclear, loyalty trumps fairness when group concerns are obvious (see Hildreth and Anderson 2018; Waytz, Dungan, and Young 2013). Here, I make group concerns obvious using a survey experiment.

The data for this survey experiment come from the Lucid sample described above. A total of 1,001 individuals were surveyed. A total of 500 respondents—the same 500 described in the *Assessing Fairness* section above—serve as the control group; these respondents were randomized into the control group/observational portion of the survey. They saw no information regarding the Court's decisions, decision-making, or any report about the Court's fairness. The remaining 501 respondents were randomized into one of three treatment groups.[7] Some are led to believe the Court engages in favoritism—an affront to fair procedures—although the direction of the favoritism is withheld. Others are led to believe the Court's unfair procedures benefit Republican groups, and others still Democratic groups. These latter two treatments serve to prime group concerns in an obvious manner; an individual can plainly determine whether her group "wins" or "loses" from the Court's unfair procedures.[8] Specifically, subjects are told[9]:

Recently, the Judiciary Oversight Committee—which is comprised of three Republicans, three Democrats, and three non-partisan members who are permitted to practice law—unanimously concluded that the U.S. Supreme Court regularly ignores evidence presented by [particular groups/Republican groups/Democratic groups].

It is important to note that this treatment likely does not reflect actual circumstances; even ardent Court watchers are unlikely to read reports by oversight committees. However, this study stresses experimental, rather

than mundane, realism. There are dozens of plausible mechanisms by which one might perceive the Court to be unfair. For instance, particular legal justifications (Farganis 2012), media accounts (Salamone 2018), statements by political figures (Armaly 2018a; Nelson and Gibson 2019), and partisan attacks (Clark and Kastellec 2015) are all feasible methods by which one may arrive at the conclusion that the Court is unfair. As noted above, various politicizing statements and attacks often occur in practice. I wish to elicit the psychological states of loyalty and fairness, simultaneously, rather than describe an actual event that may induce unfairness perceptions. I more thoroughly consider the mechanisms by which such perceptions can come about, and how they have taken shape over time, in the discussion.

In addition, though the Supreme Court does not, technically, assess evidence, there are myriad ways one could perceive the Court to "ignore evidence" presented by one group, such as selectively citing attorneys or briefs, discriminating in interrupting counsel, or simply failing to give equal weight to both arguments.[10] Clearly, such behavior is an affront to fair procedures. This study merely seeks to demonstrate the substantive and causal role of unfair procedures. Examples of real-world unfairness are unlikely to be as blatant as the treatment. Still, the Court does not need to be *truly* unfair for that perception to matter. Perceptions—even demonstrably inaccurate ones—still influence subsequent political evaluations (e.g., Gaines et al. 2007; Nyhan and Reifler 2010). Thus, the connection between the perception of fairness—whether it is manufactured or arises organically—and support in the face of group benefits is of interest.

Instead of examining, say, a Democrat led to believe the Court favors Democrats separately from a Republican who believes the Court favors Republicans, I combine similarly situated respondents across party. I wish to assess individuals who have similar (experimentally induced) perceptions about the Court similarly, regardless of their existing predispositions.[11] That is, I consider three categories of individuals:

1. *Unclear*, or respondents who cannot ascertain whether the Court favors or disfavors their group. These respondents are simply told the Court disfavors "particular groups."
2. *Winners*, or respondents led to believe the Court disfavors the *out-group* (e.g., a Republican led to believe the Court disfavors Democrats). Winners benefit from the Court's behavior.
3. *Losers*, or respondents led to believe the Court disfavors *their* group (e.g., a Republican led to believe the Court disfavors Republicans). Losers suffer from the Court's behavior.

Responses to two measures of support for the Court are considered.[12] First, the diffuse support (or legitimacy) battery popularized by Gibson, Caldeira, and Spence (2003a) determines one's (lack of) willingness to make institutional changes to the Court. Second, general acceptance of the Court's decisions, which ranges from definitely should not be accepted (1) to definitely should be accepted (4), directly taps the acquiescence component of support, but avoids issues of institutional independence (see Gibson, Caldeira, and Spence 2005).

Hypotheses

When group considerations are not salient, fairness is the paramount norm (Waytz, Dungan, and Young 2013). So, I expect that those in the unclear category will uniformly express disappointment with the Court, compared with the control group. In the absence of group considerations, unfair procedures should reflect poorly on the Court, thereby decreasing diffuse support and decision acceptance. More specifically, I hypothesize:

> **Hypothesis 1:** Respondents who receive no information regarding which group the Court's unfair procedures help (i.e., unclear) will be less willing to accept Supreme Court decisions, relative to the control group.
> **Hypothesis 2:** Unclear respondents will be lower in diffuse support, relative to the control group.

When unfairness harms one's group, the fairness and loyalty norms demand the same response (i.e., to rebuke the offender). For losers, I anticipate that evaluations of the Court will decrease, relative to the control group. Specifically:

> **Hypothesis 3:** Respondents led to believe the Court's unfair procedures harm their group (i.e., losers) will be lower in decision acceptance, relative to the control group.
> **Hypothesis 4:** Losers will be less diffusely supportive, relative to the control group.

Finally, when it comes to winners, the theory leads us to suspect that the role of fairness will be minimized, relative to loyalty. The expected response to unfairness among non-winners is a decrease in support; I expect the opposite of winners but am agnostic as to the magnitude of the effect. There are two empirical possibilities that would lend support to the theory. In the first, the negative influence of unfairness may simply be weaker. Fairness is a powerful, often prevailing norm (Waytz, Dungan, and Young 2013), and its influence may not be altogether erased by loyalty. In this case, I expect acceptance and diffuse support to be unaffected, relative to the control
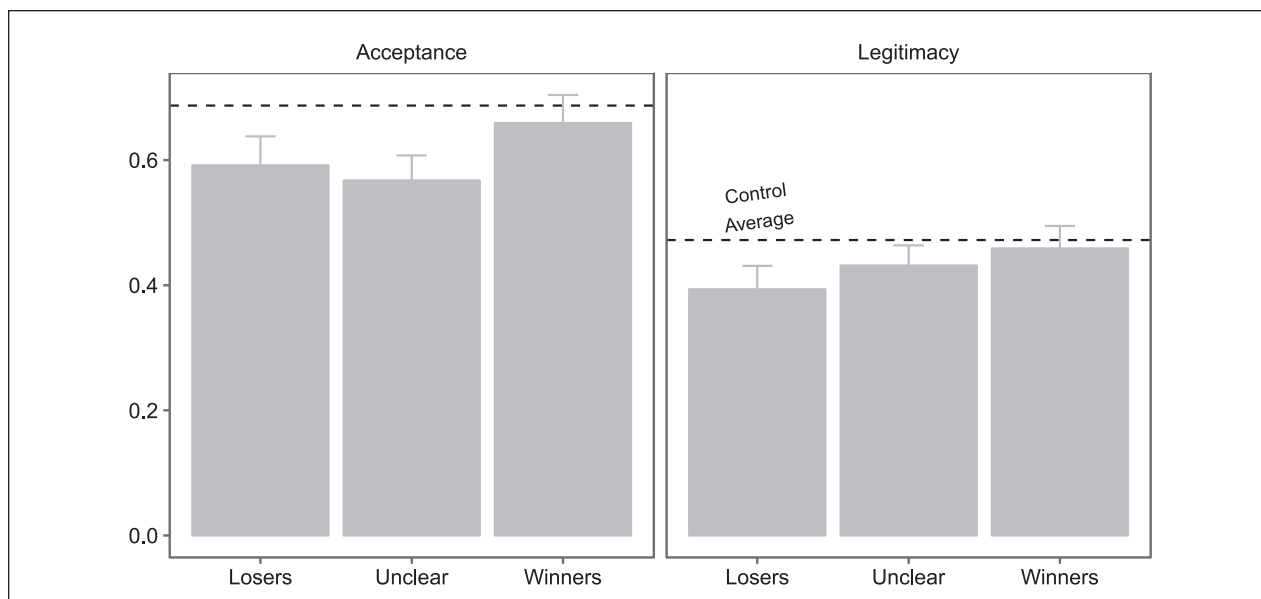
Figure 2. Effect of unfair procedures on acceptance and legitimacy.

group. In other words, those who believe their group is benefiting from the Court's impropriety will not decrease evaluations of the Court, even though they normally would under other circumstances. Simply, the positive effect of winning may offset the negative effect of unfairness. As such, I hypothesize:

>**Hypothesis 5:** Respondents led to believe the Court's unfair procedures help their group (i.e., winners) will report equal levels of decision acceptance, relative to the control group.
>**Hypothesis 6:** Winners will report equal levels of diffuse support, relative to the control group.

The alternate possibility for the winners group is that they entirely ignore the fairness norm and instead promote loyalty. Although fairness is commonly the prevailing norm, previous work indicates that loyalty can override fairness (Waytz, Dungan, and Young 2013). The positive effect of winning may overwhelm, instead of simply attenuate, the negative effect of unfairness. In this instance:

>**Hypothesis 7:** Winners will report greater levels of decision acceptance, relative to the control group.
>**Hypothesis 8:** Winners will report greater levels of diffuse support, relative to the control group.

Empirical Results

To determine the effect of group considerations on evaluations of the judiciary, I simply regress acceptance and

legitimacy onto a categorical variable that indicates presence in the control group, in the unclear category, in the winners category, or the losers category. Because this is a randomized design, I omit control variables (though results hold in the face of controls). See Supplemental Appendix for ordinary least squares regression coefficients, with and without control variables.

Linear predictions are displayed graphically in Figure 2. Each outcome is scaled 0–1. Within each panel, a dashed horizontal line represents the average response for the control group. Estimates for the respondents in the losers category are represented by the leftmost bar, the unclear category at center, and winners at right. Each bar represents the predicted response for subjects in that category, and vertical bars represent upper bounds of 95 percent confident intervals around those estimates. Note that when confidence intervals overlap a horizontal dashed line, differences between that category and the control group are not statistically significant; the same is *not* true of overlapping confidence intervals (see Bolsen and Thornton 2014).

I begin by considering decision acceptance in the left panel. Consistent with expectations, respondents in both the unclear and loser categories are less willing than the control group to accept the Court's decisions when they believe the Court engages in systematic impropriety (consistent with hypotheses 1 and 3).

The main test of the central premise is whether the winners category differs from the control group. Consistent with hypothesis 5, I find that it does not. These individuals do *not* differ from respondents who have not considered the Court's fairness. In other words, even though individuals *should* be less prone to accept

Table 2. Summary of Substantive Effects.

	Acceptance		Legitimacy	
	% decrease	Cohen's d	% decrease	Cohen's d
Unclear	19	0.45	9	0.20
Losers	15	0.34	18	0.37
Winners	4	0.11	3	0.06

All substantive effects are relative to control group. Percentages rounded to nearest integer.

decisions when confronted with information that the Court is systematically unfair (according to previous work and the evidence among those in the unclear category), this is not the case when one benefits from those unfair procedures. Individuals may be willing to turn a blind eye to perceived institutional unfairness when it benefits their group.

Encouragingly for the main hypothesis, results are similar when it comes to legitimacy, in the right panel. Unclear and loser respondents express disappointment with the Court in the face of improbity (consistent with hypotheses 2 and 4), but winner respondents do not (consistent with hypothesis 6). That is, respondents who benefit fail to punish unfair behavior, while their counterparts for whom group concerns are unclear or who are receiving "the short end of the stick" uniformly punish unfairness.

Information in Table 2 places these effects in substantive terms. Across the board, effect sizes for the unclear and loser categories are moderate in size, while they are very small (indeed, negligible) for winner respondents. The average percent decrease, relative to the control group, for unclear and loser groups is 15 percent; for the winners group, it is 3.5 percent (which is indistinguishable from 0). The average standardized effect size for the unclear and loser groups is 0.34, which means nearly two-thirds (around 64%) of treatment respondents will have lower evaluations of the Court than the control group average. For the winner group, the average standardized effect size is four times smaller, only 0.085.

Finally, I note that, in the Supplemental Appendix, I consider heterogeneity across levels of loyalty. Among a (relatively small) subsample ($n = 206$), the effect of unfairness is heterogeneous across partisan loyalty, such that more strongly loyal partisans are more disappointed by unfair procedures than less loyal partisans among losers, but effects are fairly homogenous for winners.

Fairness, Loyalty, and Specific Case Context

The above survey experiment reveals that though institutional unfairness is generally punished, many will accept

favorable outcomes at the expense of fair procedures. However, that study ignores case context. In many instances, certain factors that might reasonably impact evaluations of the Court fail to do so, simply because policy victory (or loss) overwhelms other considerations (Woodson 2015). Ultimately, we must conclude that the effect of unfairness is modest—at best—if it only influences evaluations in the abstract sense. Accounting for specific policy support when considering loyalty in reactions to the Supreme Court more accurately reflects the average citizen's modal exposure to the Court. Individuals most frequently learn about, and react in response to, the Supreme Court in the context of individual decisions. So, instead of examining the role of loyalty in the vacuum of information about the Court absent case context, I integrate case considerations here.

To determine how the fairness–loyalty tension influences attitudes in the presence of policy victory/loss, I surveyed 349 respondents in February 2019 using Amazon's Mechanical Turk (MTurk). In total, 124 respondents were randomized into the control group, and 225 were in the treatment group. All respondents began by answering items about their preferences on several policies. One item in particular is of concern to us; respondents were asked to state, using a 5-point Likert scale, the degree to which they agreed with: "If an employer gives you a cell phone for work, he/she should be allowed to read all the text messages and emails you send and receive on that phone." Following Salamone (2013), I use the response to this item as a measure of ex ante policy preferences regarding electronic workplace privacy. I select this policy because, as Salamone (2013) notes, it represents a medium salience policy about which individuals care, but on which they do not necessarily have crystallized views. This biases the test *against* hypothesized results, relative to a higher salience issue. For an extremely salient issue (e.g., abortion), an individual may be so uncommonly willing to forgo fairness to secure policy victory that it might be difficult to obtain generalizable information on the role of loyalty. In addition, neither party "owns" electronic privacy (indeed, the average response to the item in these data are consistent across partisanship), meaning whether one wins/loses on the specific policy is idiosyncratic to the individual.

After the policy preference items, treatment respondents read the Judiciary Oversight Committee treatment vignette[13] and control respondents saw no additional information. All respondents then read the following description of a case outcome: "The United States Supreme Court recently ruled that employers may read text messages on their employees' company issued phones." Finally, subjects responded to the acceptance and legitimacy items.

Table 3. OLS Regression with Ex Ante Support.

	Acceptance	Legitimacy
Outcome Support	0.160*	0.067*
	(0.029)	(0.027)
Losers	−0.044	−0.058*
	(0.040)	(0.024)
Winners	0.053*	0.025
	(0.024)	(0.027)
Constant	0.607*	0.502*
	(0.029)	(0.024)
R^2	.12	.04
n		268

Cell entries are OLS coefficients. OLS = ordinary least squares.
*$p < .05$.
Bootstrapped standard errors in parentheses.

To determine the role of loyalty on evaluations of an unfair Court in the presence of policy victory, I categorize respondents as winners and losers just as above (although I omit the "unclear" category here, as the neutral treatment was not used). I regress the dependent variables (i.e., acceptance[14] and legitimacy) onto a categorical variable marking presence in the control, winner, or loser category, as well as a dichotomous variable that indicates whether one was supportive of the Court's decision based on ex ante preferences. Individuals who agreed or strongly agreed with the ex ante policy question regarding employee privacy should be supportive of the Court's decision to allow employer searches; conversely situated individuals would be opposed to the Court's decision. Dichotomizing the ex ante support measure is consistent with the norms of existing research on policy preferences and judicial support (Salamone 2013), and avoids uncertainty that arises as to how to handle respondents who are ambivalent on the policy.

Table 3 displays these estimates. I begin by considering outcome support. Relative to those who oppose the Court's decision based on ex ante preferences, those satisfied with the outcome are more accepting of decisions in general and are more diffusely supportive of the institution. This is consistent with extant research (Salamone 2013; Zink, Spriggs II, and Scott 2009). Even when accounting for outcome support, however, effects similar to those in the first experiment persist. Much like above, those who believe the Court's unfair procedures benefit the out-group perceive the institution to be less legitimate, per the negative coefficient for *Losers* in the rightmost column. Those who stand to gain from institutional unfairness fail to punish the Court in a similar manner (just as was true above).

Regarding the acceptance model, the results are slightly more nuanced (though are still consistent with loyalty trumping fairness). Although losers do not rebuke

the Court's unfairness by expressing less willingness to accept decisions, I find that winner respondents are *more* accepting of Supreme Court cases, even when accounting for specific disappointment with the case at hand. Though this deviates from the findings above, it is still consistent with the theoretical expectations (i.e., above I find support for hypothesis 5; here I find support for hypothesis 7). Inasmuch as the tension between fairness and loyalty can be "won" by either norm, and the victor is conditional upon context (such as winner/loser status or the salience of the case), I believe the results here indicate that loyalty seems to overwhelm fairness, rather than merely offset the effect of fairness, in this specific instance. Other sets of circumstances—other issues, for instance—may yield results more similar to those above, though I expect the role of loyalty to persist.[15]

Altogether, I believe this is rather stark evidence in favor of the main hypothesis, and that support for a particular outcome is incapable of overwhelming loyalty-based acquiescence to beneficial institutional unfairness. In other words, the only circumstance in which one fails to punish the Court for alleged perfidious behavior is when one believes herself to benefit from the institution's uncouth actions. This is true even when accounting for satisfaction with a particular decision, a factor that commonly dominates evaluations of the judiciary (e.g., Woodson 2015). This finding is particularly critical, as it more closely mimics the context in which individuals learn of Court behavior than the study above. Another reading of these findings may suggest that winning matters more than procedural fairness. I believe that the evidence more strongly suggests that winning can offset procedural unfairness, sometimes overwhelming it, as the loyalty norm is more powerful in certain circumstances. But, I cannot say with the evidence presented here that one norm matters more than the other. Indeed, the role of each norm in evaluations of the judiciary is conditional on the other norm.

Discussion

In this paper, I set out to understand how group loyalty impacts the relationship between perceptions of fair Supreme Court procedures and support for the judiciary. I believe this is one of the first attempts to simultaneously consider dedication to two norms that may influence evaluations of the judiciary—fairness and loyalty. Using a broad array of data—including a nationally representative survey with an embedded experiment, and a convenience sample-based experiment—I find that, despite believing institutional fairness is important (see Baird 2001), and despite negatively influencing individuals in the general sense, unfair Court procedures that benefit one's group are seen as acceptable. More specifically,

"winners," or the beneficiaries of perceived systematic judicial impropriety, fail to penalize the Court (in terms of legitimacy and decision acquiescence) like other respondents do. In some instances, they even increase their evaluations of the Court.

What these experimental results suggest about real-world institutional arrangements may depend on who perceives themselves to be winning and losing due to the Court's unfair procedures (regardless of where that perception arises). Say the winners of unfair Court procedures comprised a majority of the electorate. In such an instance, we might expect the failure to punish the Court (as found in the experiment) to play out in reality. If most people accept the policy resulting from the unfairness, the Court will probably go unsanctioned and people (and, subsequently, their elected officials) will acquiesce to decisions. If, however, a majority of the electorate was made up of losers of unfair procedures, the loyalty norm could manifest as electoral mobilization. Perhaps voters would cast their ballots for senators and presidents who could "fix" the Court. Individuals may urge their elected officials to eschew enforcement of decisions with which they disagree. Or, perhaps the Court itself may sense it is in need of course correction and alter its decision-making in future cases (a la Casillas, Enns, and Wohlfarth 2011). The most normatively concerning scenario, with respect to the Court's rights-protection function, is if a plurality of people are losers, but find themselves unable to sanction the Court either via electoral success or the constraining capacity of public opinion alone.

Of course, there are limitations to the results and their connection to real-world events. For instance, legitimacy appears to be fairly stable over time (Nelson and Tucker, n.d.). And, in some contexts, individuals across the board fail to punish courts when they are viewed in a political light (e.g., Gibson 2008). What, then, should we make of experimental results that indicate legitimacy perceptions can decrease as a function of information about the Court? Stability in aggregate support can mask individual-level variability (Christenson and Glick 2015), meaning that some members of the public may be upset by unfair procedures, but aggregate support is unaffected. Practically speaking, though, an act that uniformly upsets the mass public seems unlikely in the era of polarization. Still, the Court is now discussed in ways that can make loyalty operative when one considers the institution (Salamone 2018). Support, though relatively stable, may be more connected to these loyalty considerations that seem to increasingly underlie all aspects of one's political life. These results indicate that these loyalty considerations can influence short-term reactions, like decision acceptance. Although we have not seen massive diminutions of support for the Court as a result of an increasingly polarized political world (see Nelson and Tucker,

n.d.), a series of short-term, contextually specific disappointments that are linked to strong attachments may ultimately undermine long-term esteem for the Court (see Baird 2001).

In addition, individuals in the mass public are not likely to read reports by oversight committees (the nature of the experimental treatment). Although I suspect such reports would make headlines, it is still the case that the public has not been exposed to systematic evidence of unfair judicial procedures. Nevertheless, as is true in many facets of political life, subjective perceptions matter more than objective reality (Bartels and Johnston 2013; Enders and Armaly 2019). One need not know the Court is unfair, but need only to believe it. I believe the likeliest avenues by which individuals would reach conclusions that the Court is unfair are (1) the outcomes of specific cases, (2) cues offered by political figures, or (3) the changing nature of media coverage.

More accurately, all three avenues are likely to combine to influence public opinion. As Christenson and Glick (2015) show, reactions to specific cases—in particular, salient cases—influence evaluations of the Court (though see Gibson, Caldeira, and Spence 2003b). Elites are very effective at framing (Druckman 2001), and partisan framing can significantly shape public opinion on the Court (Clark and Kastellec 2015). Moreover, the media increasingly tends to treat the Court like the elected branches (see Salamone 2018; Solberg and Waltenburg 2014), where political choices reflect "us" versus "them." These portrayals of the Court influence how fair people perceive it to be (Ramirez 2008). Nevertheless, the psychological negotiation between loyalty and fairness should persist, regardless of how one reaches conclusions about the Court's propriety. This paper is a useful first step in describing that negotiation.

I encourage future research to focus on the limits of the fairness–loyalty tension vis-à-vis the Supreme Court. Must evidence of impropriety be uncommonly blatant, or is a mere indication from a group-associated figure sufficient? Similarly, how long-lasting are the effects of evidence regarding improbity, and does the method by which one learns of it influence its duration? In the second experiment, I only use one type of case—employee privacy—that is of medium salience. Other types of cases may yield different results, or otherwise alter one's calculus in navigating the loyalty and fairness norms. These data cannot tell us how individuals may react to a more salient case (e.g., abortion), or to a different medium salience case. I believe investigating such questions is fruitful for future research.

Finally, the Court has always been attacked (e.g., Roosevelt's Court-packing plan). Why should concern be greater regarding the modern Court than those of days past? I believe the battle over the Court is now more

accessible to the average American than it once was. The way the Court is discussed in the American public has changed (Solberg and Waltenburg 2014); the "cult of the robe" now shares media space with "cult of personality" stories that have come to typify coverage of the Court (much like coverage of other institutions). Similarly, when public figures speak out about the Court, their communications reflect clear partisan content (Krewson, Lassen, and Owens 2018). I do not necessarily argue that the Court is viewed as more or less legitimate now than in the past. Instead, a modern audience—that now better connects all elements of politics with their existing predispositions and attitudes (e.g., Enders and Scott 2019; Levendusky 2009)—may be more receptive to attacks on the judiciary, which may come to bear on long-run support.

ORCID iD

Miles T. Armaly https://orcid.org/0000-0001-8945-5797

Notes

1. One important finding of existing studies that pertains to loyalty-driven behavior is that support for unethical behavior that benefits one's group is not merely a rationalization of one's own bad behavior. Indeed, Hildreth and Anderson (2018) find that individuals are willing to excuse the bad behavior of *others*. This is crucial as, here, I ask whether individuals will excuse the bad behavior of the Supreme Court, but I do not ask whether they would, if somehow possible, rig the system in their favor.

2. From a measurement theory perspective, that Reysen and Puryear deem their scale "honesty" is unimportant for these purposes. As the items below indicate, the scale taps the qualities that indicate the lack of discrimination or favoritism, the fundamental elements of fairness by any definition.

3. The final item, "The Supreme Court does not use fair procedures," is not part of Reysen and Puryear (2014)'s scale. In addition, according to the Marquette University Law School's Supreme Court poll, it is appropriate to refer to the Court monolithically, rather than a group of individuals. See https://law.marquette.edu/poll/wpcontent/uploads/2019/10/MULawPollSupremeCourtReportOct2019.pdf for details.

4. Respondents were randomized to take part in either an observational portion of the survey or an experimental portion. Those randomized into the observational portion also serve as the control group for the experimental analysis below. A survey diagram appears in the Supplemental Appendix.

5. The Congress survey was conducted via Amazon's Mechanical Turk (MTurk) in April 2019.

6. In the Supplemental Appendix, I consider the role of other variables of theoretical interest. Fairness views seem to be structured and coherent. Other evaluations of the Court—like legitimacy and politicization—relate to fairness in the expected manner. In addition, dimensional analyses show that diffuse support and fairness are two unique dimensions, which serves as evidence of discriminant validity.

7. See survey diagram in Supplemental Appendix for more information.

8. In the classical sense, the treatment vignette is different from a traditional partisan cue. Party cues are statements made by a party member or the party itself. Previous research has focused on such cues (e.g., Clark and Kastellec 2015). However, recent research has shown that cues given by sources perceived to be unconnected to a party are less capable of influencing evaluations of the Court, even when the content of the cue may contain useful information (see Armaly 2020). Here, the cue content primes one's loyalty to a party, but the *source* of the cue is not party-affiliated. Thus, it is difficult for respondents to determine whether they should trust the cue and support its conclusions (see Nicholson and Hansford 2014; Sternthal, Dholakia, and Leavitt 1978). Party cues are, of course, present in some sense. But, as Democrats, non-partisans, and Republicans are purported to agree in the treatment, the purpose of the cue is to increase the credibility of the committee's information (see Nicholson 2011).

9. To ensure that the treatment effectively manipulated perceptions regarding the Supreme Court's fairness, I conducted a pre-experimental manipulation pilot study. Conducting the manipulation check before the experiment, rather than within, ensures that the manipulation check itself does not influence experimental results (see Hauser, Ellsworth, and Gonzalez 2018). The details can be found in the Supplemental Appendix. The treatment effectively manipulates perceptions of the Court, such that those exposed to the treatment perceive the Court to be less fair (using the fairness scale described above) than those in the control group.

10. I have little concern that this aspect of the treatment vignette is consequential. First, appellate courts *are* able to rule on things like the sufficiency of evidence. But, more importantly, it is doubtful that the average American recognizes that the Court does not, strictly speaking, examine evidence. Other treatment vignettes that omit such passages operate in substantively and statistically similar fashions. See Supplemental Appendix for more information.

11. As a result of considering partisanship, pure Independents are omitted from the analysis. Only 54 (of 501) respondents in the survey experiment identified as true Independents.

12. All question wordings appear in the Supplemental Appendix.

13. This is the same treatment used in the first experiment, though the "particular groups" category is omitted.

14. Acceptance is measured *very* slightly differently here than above. Here, the survey item asks, "Generally speaking, do you think the U.S. Supreme Court's decisions ought to be accepted?" Previously, the item asked "overall" instead of

"generally speaking." Because a specific case is referenced here, it is necessary to distinguish specific acceptance from general acceptance.

15. There is little reason to believe that treatment effects vary across outcome support. The general assertion is that loyalty plays a distinct role on evaluations of the Court (even when accounting for case-specific support), and that the role of outcome support is limited. Nevertheless, I consider heterogeneity across outcome support in the Supplemental Appendix. In short, average treatment effects (above) are reflective of conditional treatment effects. The effect for winners in the acceptance regression appears driven by those who oppose the outcome. This is likely because outcome supporters are already elated—an estimated 0.82 on the 0–1 acceptance scale. As such, any remaining effect of the treatment is surely to influence only those opposed to the specific outcome (i.e., those for whom there is room to increase).

Supplemental Material

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