

EXCERPT from:

**A decade-long longitudinal survey shows that the Supreme Court is now much more conservative than the public**

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*Has the US Supreme Court become more conservative than the public? We introduce results of three surveys conducted over the course of a decade that ask respondents about their opinions on the policy issues before the court. Using these data, we show that the gap between the court and the public has grown since 2020, with the court moving from being quite close to the average American to a position that is more conservative than the majority of Americans. Second, in contrast to findings showing consistency in the public's approval of or deference to the court, we find that the public's expectations of the court vary significantly over time and in tandem with changes in the court's composition and recent rulings. Even so, many members of the public currently underestimate the court's conservative leaning. Third, we find that respondents' perceptions of the court's ideology relative to their own are associated with support for institutional changes but with important differences between Democrats and Republicans. The fact that so many people currently underestimate how conservative the court is implies that support for proposed changes to the court may be weaker than it would be if people knew with greater accuracy the court's conservative nature.*

The US Supreme Court has undergone significant changes over the past decade and its rulings—including those involving key policy issues such as civil rights, health care, and abortion—have shifted along with its composition. Does this mean that the court is now out of step with public opinion? If so, by how much?

Such questions are important. The court lacks the power of “either the sword or the purse” (1) and so must draw its legitimacy as a governing institution from public support. For the most part, observers think that the court has rarely moved too far from public sentiment through either self-correction or from the back-and-forth of the appointments process (2, 3). However, in recent years, experts have questioned whether the court remains aligned with the public. Many believe that this puts the court at risk for being seen as behaving politically, which could have significant consequences. “If the public comes to see judges as merely ‘politicians in robes,’” as Justice Stephen Breyer has written, “its confidence in the courts, and in the rule of law itself, can only decline” (4).

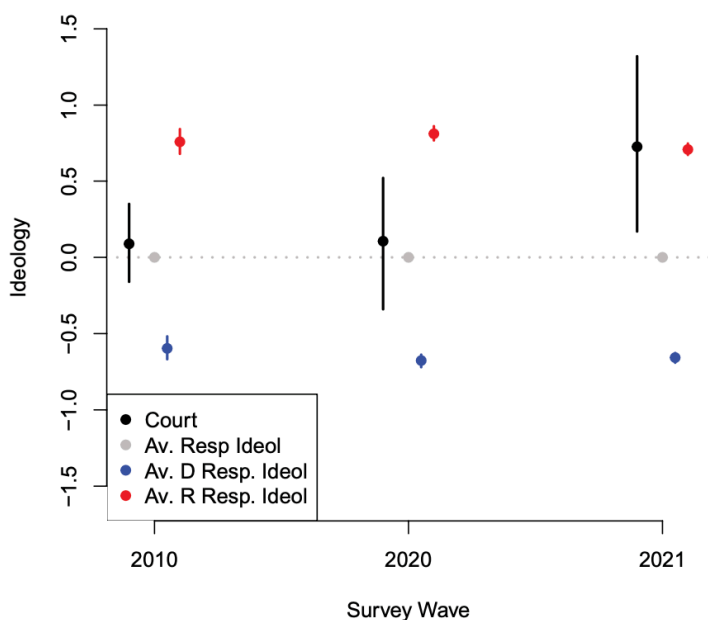
We provide a long-view examination of these questions by leveraging a unique set of three surveys taken over 12 y (in 2010, 2020, and 2021) that ask respondents their opinions on the actual policy questions before the court. By comparing respondents' own preferences on these issues, their expectations about how the court will rule, and the court's eventual rulings, we can estimate divergence between the court's and the public's ideological positioning and also address whether the public's expectations match up with the court's actual behavior. By ideological position, we mean that political views can be represented spatially as locations in one-dimensional Euclidean space (5).

Importantly, because our data were collected in the span of over a decade, we can also examine how these patterns have fluctuated over time, leveraging significant changes to the court's composition—including two changes to the identity of the court's median, and therefore pivotal, member (6). Further, collecting data over the short time period of 2020 and 2021 allows us to conduct a pre-post analysis of public opinion toward the court and how it may correspond with a sudden change in its ideological composition.

We make several discoveries that contribute to our understanding of the court's ideological positioning and public perceptions. First, we document the empirical fact that the court's rulings were once similar to the preferences of the average American but are now more conservative than the preferences of the majority of Americans. Second, we show that, unlike beliefs about the legitimacy of the court and its role in American democracy (which other research has shown remain consistently high), expectations about how the court will rule fluctuate remarkably. These fluctuations suggest that the public may be sensitive to

the changing composition of the court as well as to its rulings: although much has changed since 2010, as the court has moved sharply to the right, so, too, have recent expectations of how the court will rule (7, 8). However, even so, many Americans underestimate the court's conservative lean, with Democrats particularly likely to peg the court as more liberal than it actually is (9). Third, consistent with previous work (10), we find that expected ideological distance from the court is associated with support for changing institutional features of the court but that these relationships differ between Democrats and Republicans, particularly on the issue of court expansion. This suggests that if people—and particularly Democrats—knew with accuracy the court's conservative nature, support for court curbing might increase.

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**Fig. 1.** Court's actual ideological positioning relative to the public's. Black points show estimated ideology for Supreme Court (estimated based on majority position on each case included as a separate voter) in each year. Gray points show average estimated ideology for all respondents (note that the scale has been defined such that this is equal to zero in every year). Red (blue) points show average estimated ideology for Republican (Democratic) respondents. Vertical bars indicate 95% credible intervals for each estimate.

After changes in the court's composition over the last 10 y, for example, we find that the court is now sharply to the right of public opinion. We estimate that after the median shifted from John Roberts to Brett Kavanaugh in late 2020, the court is now near the typical Republican and to the ideological right of roughly three quarters of all Americans.