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ARTICLE

"The Future of the US Supreme Court: Ethics, Polarization, and Reform"

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Abstract

Despite nearly two centuries of actively stylizing itself as above the partisan fray of banal politics, the US Supreme Court faces increasing scrutiny over its ideological nature, ethical lapses, and perceived disconnection from democratic accountability. This article explores potential reforms including ethics guidelines, public affairs offices, and term limits to enhance the Court's legitimacy. It also examines trends in judicial decision making, the Court's relationship with public opinion, and the influence of identity politics on judicial perceptions through an examination of the scholarship on the Court. The article concludes by emphasizing the need for ongoing research and methodological innovation to address these challenges and ensure the Court's role in American democracy.

Keywords: accountability; ethics; legitimacy; polarization; reform; term limits; United States Supreme Court

Among the branches of American government, the Supreme Court serves a unique role as the final arbiter of the law. Institutionally, the Court's justices take this role seriously, often publicly portraying their work using the dispassionate frame of the humble referee.[1] The Court hears cases and merely applies the standards written into law without letting personal preferences color its rulings.

However, despite nearly two centuries of actively stylizing itself as above the partisan fray of banal politics, the Court's ideological nature has increasingly come under scrutiny in the aftermath of a series of controversial nominations, rulings, and ethical lapses by its Justices. In turn, policy makers, experts, and even the mass public have grappled with whether the institution has become too powerful and disconnected from the channels of accountability that accompany

democratic governance. For reformers, proposals to improve the Court's standing involve concerns that run deeper than the institution's waning popularity. To them, potential reforms have serious implications for the Court's store of legitimacy—or the degree to which the public trusts an institution to do what is "right" and views its actions as justifiable and proper. If this legitimacy is what sustains democratic institutions in the face of unpopular outputs, then a sharp decline in legitimacy—especially of the judicial variety—can have nasty repercussions that reverberate across the democratic system more broadly.

This article investigates scholarly research on these themes. We begin by discussing possible popular reforms to the Court. We then pivot to a discussion of the development and evolution of scholarship on the Court, which occasionally investigates these reforms. We conclude with a consideration of the future of the Court.

I. Institutional Reform Proposal Trends: Public Opinion, Expert Opinion, and the Popular Press

First and perhaps foremost, *ethics* has been a topic for possible reform for a number of years and grew to a crescendo in the fall of 2023,[2] which led to the adoption by the justices of the first ever ethics guide for the Supreme Court. Although action was taken by the Court, presumably due to media pressure and concern that Congress would otherwise impose an ethics guide on the Supreme Court, many observers subsequently lamented the self-enforcement and questioned whether the ethics guide went far enough. Adopting an ethics guide, then, was a move to address a perception issue involving the idea that justices were above the proverbial law. In fact, all other federal, state, and local judges *and* Congress already abide by a self-enforcing Code of Ethics.[3] In the end, the new Supreme Court Ethics Guide was released without fanfare, but more detrimentally, without context, leaving interpretation of the event to the media and critics of the Court. After adoption, we are interested in whether adopting the code of ethics makes a difference in perceived long-term legitimacy.

An additional relatively easy reform and one that could have a large payoff is enhancing the *public affairs communications* of the Supreme Court. Historically, the justices have resisted this innovation, seemingly partly due to the persona of rising above politics and public opinion. However, this strategy does not seem to pay off, and thus we see such a reform as a positive move for democracy. Hitt and Searles find that the media's coverage of the Supreme Court has increasingly adopted a game frame, which partially explains recent declines in support for the Court[4]. A more proactive public relations strategy that explained the Court's legal rationales in simple language, for instance, could help project the value of the courts and better educate the public about the role of the judicial branch in the democratic system.

The *number of justices* on the Court has been a topic of reformers at various points in history, as the number of justices is left to Congress in Article III of the Constitution. The Judiciary Act of 1789 set the number at six, but it varied successively at five, six, seven, nine, ten, seven, and again to nine in 1869, where

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the number has remained.[5] The relatively recent and obvious conservative turn of the court due to President Trump's appointees has renewed calls for adding justices. The number of justices to add is generally tossed around as three or four. Current discussions are four new justices because Democrats are down three justices. These partisan dynamics seem to have resulted in a historically conservative Court in terms of the ideological implications of its rulings.[6] Likely calmer heads will prevail, as they have in the past, as strategically altering the number of justices in a tit-for-tat change is seen as a losing strategy. As scholars of the Court, we worry about how such moves, and even such discussions, erode confidence in the Court, exacerbating declines in public evaluation of the judiciary driven by the Court's own decisions.

Related to discussions of the number of justices is a discussion of *term limits* for the justices.[7] Although part of the motivation may again be that the Court is seen as more conservative than public opinion and thus adding term limits is seen as a way to dissipate the influence of the court, this reform has the potential to decrease, not inflame, politics around the court. That is, court-packing plans are blatantly political, whereas term limits can remove politics by providing each president a known and equal opportunity to appoint members of the Supreme Court. This reform may have an initial negative perception, as it seemingly decreases the insulation that comes with lifetime appointments for justices. However, the politics surrounding the confirmation hearings in the Senate or due to the vagaries that come with who is president when openings on the Court occur would also decrease.[8]

The politics that swirl around a related reform proposal, *maximum age limits*, are similarly thorny. Age limits essentially set an age for forced retirements for justices. Although the public shows high consensus supporting age limits, political leaders show no inclination to impose such restrictions on the courts or themselves.[9] Term limits avoid the unlikely age limit proposal while still resulting in turnover. If term limits were enacted, it would be important to have term limits that are not so short as to shift power further to staff, as has been clearly demonstrated as a result of short legislative term limits, for example, Kousser.[10] In general, serious judicial reform proposals suggest 15- or 18-year term limits, which is more than sufficient to ease the concern that the terms are too short. On the other hand, it is hard to argue that lifetime appointments are needed based on quality given the extensive experience and education that appointees have before being nominated for the Supreme Court, and no one seems to argue that justices are better after say 15 years of service as a member of the court versus five years of service.[11] Given that a change in terms limits would require a constitutional amendment to Article III, it is less likely to be enacted than other court reforms that fall under congressional jurisdiction.[12]

Other scholars and reformers have suggested *monetary inducements* if justices retire at a certain age or level of infirmity.[13] However, financial incentives may not be sufficient to induce retirements, given the wealth of most sitting justices. Relatedly, Badas and Justus[14] find that "people who believe a larger number of the Justices are millionaires are more likely to believe the Court gives special rights to the wealthy and are overall less likely to view the Court as legitimate."

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We would expect a large and sustained public backlash depending on the level of monetary inducement, and thus it is an unwise reform discussion from the perspective of maintaining or enhancing American democracy.

Finally, we consider the topic of whether there should be *cameras in the Supreme Court.* Those in favor typically invoke the standard of transparency, whereas those opposed are concerned about the perceived legitimacy or feel decorum would be decreased either by attorneys performing for the cameras or possibly protestors looking to make a statement. Due to the COVID-19 pandemic, virtual trials and cameras have come to be fixtures in many courtrooms. Black, Johnson, Owens and Wedeking offer an important early empirical assessment of the influence of cameras in the courtroom on legitimacy.[15] They present detailed findings that consider video versus audio, neutral versus contentious exchanges, static or dynamic camera angles, and the presence of judicial symbols in the courtroom. In short, they find that "the contentiousness of the footage being viewed, the manner in which it is presented (i.e., camera angle), and the interaction of these two attributes" are the primary determinants and generally lead to an erosion of legitimacy. This is not good news for democracy and underscores the need for additional research on this possible reform.

The polarization of American politics and politicization of the courts affects reform efforts and undoubtedly influences our scholarship as well. The result has been greater scrutiny of the Courts' interactions with the other branches as well as the relationship between the court and the public.

II. Trends in Judicial Decision Making

We now turn from considering trends on institutional reform to those on judicial decision making, which has been a classic topic of interest to judicial scholars. Looking first at recent trends, there is less interest in the debates about the attitudinal, legal, or strategic models of decision making and more of a focus on the justices' growing use of *history* or *originalism.* In particular, the use of history in decisions surrounding constitutional rights. For example, in Second Amendment cases, recent Supreme Court questions and arguments have gone as far back in history as English Common law. As Carter Phillips[16] has questioned and answered, how can lower courts handle this devotion to history given their caseload? They cannot! Phillips further questioned, how useful, or even detrimental, is it to use history prior to the inclusion of women's rights? Yet obtuse questions about history seem to be appearing more in the work of the Supreme Court. We argue that the use of this more historical approach in judicial thinking, whether considered methodological or theoretical, is regressive and, perhaps, even imprudent.

There are concerns over the increasing number of *grammarians* on the court as well. As Macagnone reported on the case, *Pulsifer v. United States*, "The arguments had the justices questioning how strict of grammarians they should be when interpreting the laws Congress passes, and how to fit grammar into the structure of law."[17] Yet many agree with Tang that there is no clearly correct grammatical

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answer in *Pulsifer* and instead that the justices should adopt the least harm ethical theory to decide the case[18]. However, "the use of grammar to decide legal cases is not a novelty. The United States Supreme Court has stated that it "naturally does not review congressional enactments as a panel of grammarians; but neither [does it] regard ordinary principles of English prose as irrelevant to a construction of those enactments."[19]

The decreasing emphasis on the role of *stare decisis* in decision making is also a concerning threat to judicial legitimacy. Overruling previous cases is concerning in that it can produce chaos in the judicial system and subsequent decrease in institutional legitimacy. It leads to the natural question of whether everything could possibly be overturned? Both attorneys and interest groups are asking these questions, if not openly then in private, as there is little risk to trying a case and exceedingly large potential gain if foundational law is overturned. Associate Justice Eddins of the Hawaii Supreme Court makes astute observations about the growing tendency of the Supreme Court to ignore the legal precedent of stare decisis in a concurring opinion: "Now, settled law easily unsettles. Some justices feel precedent is advisory. See *Gamble v. United States*, 139 S. Ct. 1960, 1984 (2019) (Thomas, J., concurring); Amy Coney Barrett, Precedent and Jurisprudential Disagreement, 91 Tex. L. Rev. 1711, 1728 (2013); Dobbs, 142 S. Ct. at 2265. Who knows what law may vanish? Or what text gets exiled next? For example, see *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466 (2017) (ghosting the Establishment Clause)."[20]

With respect to the oft-asked question about whether the court pays attention to public opinion, Lubet referred to well over a century ago when "[i]n 1901 a fictional Chicago bartender named Mr. Dooley, the alter ego of the humorist Finley Peter Dunne, observed, 'The Supreme Court follows the election returns.' Ever since then, the justices have unconvincingly denied that they pay any attention at all to public opinion."[21] Linda Greenhouse was a long time New York Times columnist, and it is said that many justices would be concerned about what she would write about them. Given Justice Kennedy's personality, it seems clear he would care, whereas it is highly unlikely that Alito would care what anyone thinks. Many have studied and few dispute the "Linda Greenhouse Effect." Baum and Devins examine the Greenhouse effect, which they define as "the pattern in which some Supreme Court Justices have drifted away from the conservatism of their early votes and opinions toward the stated preferences of cultural elites, including left-leaning journalists and the "liberal establishment that dominates at elite law schools."[22] Baum and Devins find support for the Greenhouse effect and conclude that the justices are more responsive to elite audiences than to the general public. Although we expect the responsiveness of justices to the values and opinions of elites to remain, there is reason to think in an age that is increasingly influenced by social media and interest actors[23] that there will be more responsiveness to public opinion. That is, the deceivingly naive thought experiment about possibly having a case heard due to a viral social media post or an even more politically charged possibility of a case being overturned could lead to questions about further erosion of the legitimacy of and confidence in the court.

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III. The Past, Present, and Future of Supreme Court Scholarship

Although ethical concerns and prospects for reform dominate headlines about the Court today, academic scholarship on the US Supreme Court has focused elsewhere historically. Since the groundbreaking work of Pritchett,[24] scholars of judicial politics have focused most prominently on the question of how judges, especially the justices of the US Supreme Court, arrived at their decisions. This literature swelled to the point where it became utterly impossible to catalog all the excellent work that was published over the decades. In brief (and incompletely), Harold Spaeth, together with Rohde[25] and Segal[26] promulgated attitudinal explanations for judicial behavior. Murphy,[27] Epstein and Knight,[28] Caldeira, Wright, and Zorn,[29] and Maltzman, Spriggs, and Wahlbeck[30] advanced strategic explanations for judicial behavior. Others, notably Baum,[31] along with Epstein and Knight[32] took a more holistic view of judicial incentives and goals beyond public policy to understand judicial behavior.

Classic legalistic explanations[33] continued to persist into the twenty-first century, notably by Friedman.[34] Some sophisticated accounts combined these theoretical lenses to understand under which conditions legal factors as well as ideological preferences influence case outcomes and in which ways.[35] Other scholars[36] looked to understand the influence of *amicus* briefs on judicial behavior. Separation-of-powers concerns, such as the constraining influence of Congress[37] also demonstrated robust associations with judicial behavior. Still more researchers explored the influence of public opinion on the justices'[38] as well as of other institutional actors such as attorneys[39] or the solicitor general.[40]

Today's Court now represents the most conservative bench since the 1930s.[41] It is also historically pro-religion in its rulings.[42] Contemporary work forecasts decades of conservative dominance on the bench.[43] Given the maturity of the literature on judicial behavior and these historically high levels of polarization on the Court,[44] we next explore the extent to which scholars of the Supreme Court continue to focus on this canonical question.

In our review of the last five years of publications in the *American Political Science Review*, *American Journal of Political Science*, and *The Journal of Politics* revealed a surprising dearth of research on this once-seminal question centered around the factors that influence judicial decision making. Gardner and Thrower do analyze the extent to which presidential preferences constrain the Court's decision making.[45] But beyond this recent publication, the focus of the scholarly conversation regarding the Court seems to have shifted to other topics.

Perhaps this is because of the strong maturity of this literature or instead because of the overwhelmingly conservative nature of today's Court, but understanding the factors that underlie Supreme Court decision making seems to be of less pressing concern to the discipline than in prior years.

From our analysis of these same "top three" journals,[46] two significant themes emerged.[47] First, the question of how the mass public perceives the Court and its decisions remains an area of significant research output. How citizens perceive the Court, in terms of both direct approval—that is, specific support—and perceived legitimacy—that is, diffuse support—per Easton[48] implicates the Court's ability to exercise its constitutional authority effectively in a separation-of-powers

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system.[49] In an era of ethical controversy, public perceptions of the Court and its legitimacy should play a vital role in the extent to which members of Congress expend political capital on Court reforms.[50]

Bartels and Kramon[51] examine the influence of copartisan alignment with the president on Court approval, given presidential control over the appointments process. Driscoll and Nelson[52] analyze a survey experiment to show that citizens who extend the Court higher levels of diffuse support express lower support for a hypothetical politician who supports curbing the Court's authority to decide certain types of cases. Nelson and Tucker[53] similarly emphasize the importance of the Court's perceived legitimacy, showing that diffuse support appears to remain quite stable in the aggregate, despite significant variance at the individual level. Nelson and Gibson[54] demonstrate that hyperpoliticized rhetoric from politicians such as former President Trump exert only limited and conditional influence on the Court's diffuse support, as they emphasize the role of source credibility in this relationship. We anticipate that significant research will continue in this field, as Clark et al.,[55] Davis and Hitt,[56] Gibson,[57] Levendusky et al.,[58] and Gadarian and Strother[59] all explore the dynamics and structure of the Court's perceived legitimacy.

The second significant theme of our review of recently published research emphasizes the Court's relationship with other actors, especially other branches of government. Much of this work is theoretical in nature, befitting the potentially strategic nature of these interactions. For example, Strayhorn[60] demonstrates that judges on the US Circuit Courts of Appeals have rational incentives to generate conflicts with other Circuit Court rulings in their opinions, even when potential review by the Supreme Court is low, to facilitate potential adoption of their preferred legal doctrine. Parameswaran, Cameron, and Kornhauser[61] show that the Supreme Court's method of simultaneously bargaining over case dispositions and rationales for these decisions imply that, in equilibrium, the ideological location of the Court's decisions does not generally coincide with the preferences of the Court's median justice. In an interesting development in the literature regarding *amicus* briefs referenced above, Bils, Rothenberg, and Smith[62] show formally that a brief's influence should be conditional on the biases of the group that files it as well as other contextual factors.

As we reviewed publications for inclusion in this review, a third category of scholarship warrants discussion. In its 2020 "Notes from the Editors," the editorial team at the *American Political Science Review* remarked that contemporary political science demonstrates a notable shift in emphasis toward inclusivity concerning what "counts as political science" and also expressed a commitment to giving full and careful consideration to a broader range of research questions, providing several examples focused on historically minoritized groups in society.

In our review, we observed an unmistakable recent pattern of publications that focused on historically minoritized judges. Given this pattern we would be remiss to exclude discussion of the growing scholarship that connects identity politics to the judiciary. The Supreme Court has historically exhibited such low levels of racial and gender diversity that perhaps it is less amenable to such analyses. However, even that may be changing, as a recent book by Boyd, Collins,

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and Ringhand[63] explores the role of gender and race in US Supreme Court confirmation hearings. Although the study was not exclusively focused on the US Supreme Court, Escobar-Lemmon et al.[64] used a Cox proportional hazards model to analyze the duration of time before a nation appoints its first woman to its constitutional court/court of last resort, with the United States included as one of many countries in the sample.

In the disciplinary flagship journals, Szmer et al.[65] show that historically underrepresented judges on lower federal courts are also underrepresented in terms of citation patterns in subsequent opinions. Harris[66] demonstrates that increasing Black–White racial diversity at the group level in trial judges leads to subsequent decreases in the Black–White racial gap in terms of a criminal defendant's probability of incarceration. Ono and Zilis[67] show that demographic characteristics such as race and gender exhibit associations with perceptions of a judge's impartiality, a dynamic that is at times conditional on a respondent's partisanship. Bracic et al.[68] focus on the influence of a judge's sexuality, alongside race and gender, as an ideological cue in the minds of experimental respondents. Again, partisan differences emerge, as Republican subjects express less trust toward gay judges, whereas Democrats trust judges with marginalized identities more than judges with dominant identities. Based on this review of the literature, scholarship that centers on identity politics and the judiciary should continue to be an active and fruitful area of research in the coming years.

The coming years offer scholars many other exciting avenues for research. Given the rich theoretical and empirical developments in the study of Supreme Court decision making, further advancements in this canonical area will perhaps require methodological innovation. One exemplar that future scholars may build from is Dietrich, Enos, and Sen,[69] who analyzed emotional arousal in speech during oral arguments to predict the justices' subsequent votes. Further analysis of such forms of novel data may prove fruitful, especially as computational technology continues to develop.

Although the Court itself does not currently film its proceedings, Black et al.[70] show that exposing subjects to videos of actual judicial proceedings has complex and conditional effects on the court's perceived legitimacy. Contentious exchanges may have negative effects, whereas neutral exchanges, when viewed over video as opposed to audio, may strengthen legitimacy. If the Supreme Court should alter its practice to allow video recording of its arguments or otherwise better communicate its practices to the public, for example, by using a public relations office, then Black et al.'s[71] findings strongly suggest theory building and hypothesis testing in this area. Indeed, given recent lapses in the Court's perceived legitimacy, especially among Democrats[72] and in ongoing ethical controversies, simple reforms such as using video technology could prove useful for repairing the Court's relationship with the mass public.

The rise of artificial intelligence (AI), in particular technologies such as ChatGPT, may also offer new methodological avenues for scholars of the Court. An attorney in New York State recently ran afoul of the presiding in a case when his AI-generated legal brief contained citations to nonexistent precedents.[73] As technology advances, humiliating gaffes such as this seem likely to decrease.

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As they do, could ChatGPT perhaps write lay summaries of Court opinions for public consumption, as the UK Supreme Court has done with human staff for years.[74] Even if the US Supreme court itself does not undertake such an effort, news outlets and educators might well benefit from such technology. Would such summaries improve perceptions of the Court and its legitimacy? Hitt[75] investigates this question. Less likely and more controversial may be the idea that AI renders judgements in cases. Would using AI to reach an equitable decision be preferred or not? No doubt legal scholars and philosophers will be debating this in the future. A concern would be that AI is shown to be biased, but of course, so are humans. It is more likely that AI will be used to predict decisions. Future scholars should keep the rise of artificial intelligence in mind as a tool for research into the Court and its relationship to the public.

Abi-Hassan, Box-Steffensmeier, and Christenson[76] harness the power of machine learning, large language models, and natural language processing to delve into a massive data collection and curation effort to capture the text and categorize all *writ of certiorari* petitions to the Supreme Court. They are collecting variables such as litigants' names, source court, geographical origin, the Court's decision (granted/denied), general topic(s) covered, lower court disposition, jurisdiction, constitutional provisions involved, legal citations, and filing attorneys. One of the primary goals of their textual analysis is to ascertain the issue and legal areas of each petition and to then compare over time with cases on the merit from both the US Supreme Court Database[77] and the Policy Agendas Project: Supreme Court Docket Supreme Court Data.[78] They also use data mining to integrate information that quantifies and qualifies media coverage of lower court cases, considering their thematic domains and sentiment as well as information about the depth and quality of *amici* support for *certiorari* petitions and the resulting interest group networks, which results in a relational data set.

To build on the formal theoretic work discussed above and given that the Court's recent turn to the right appears to have caused a decline in diffuse support among Democrats,[79] scholars could consider using time series methods[80] to model the complex and endogenous relationship between the Court, public opinion, and the ideological makeup of the other branches of government to highlight the judiciary's role in the macro polity.[81]

Scholars have begun to fruitfully use dynamic methods while also incorporating the text-heavy nature of Supreme Court data. For instance, Matthews[82] models a fractional cointegrating relationship between the textual length of Supreme Court majority and separate opinions over time. As text-as-data methods continue to be applied to judicial opinions,[83] scholars should continue taking advantage of the many years of textual data that are available for the US Supreme Court, in its opinions, litigant briefs, *amicus* briefs, etc. Additionally, network analysis provides promising avenues for inquiry. In a recent article, Schmid, Chen, and Desmarais[84] use the dyadic properties of citations to Supreme Court opinions using an exponential random graph model, allowing scholars to account for both case characteristics and network dependence.

Alongside new computational approaches, archival and qualitative methods provide a critical lens into the Court that may elude capture in a large-*N* analysis.

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Take the thoughtful historical analysis of Snead,[85] who demonstrated that but for the Supreme Court's interventions over time, American labor law might have taken a much different course.

As a general matter, pluralistic approaches to the study of the Court[86] can allow scholars to triangulate their research designs, providing redundancy against the potential shortcomings and trade-offs inherent in any singular method.

As discussed above, the relationship between the Court and the public continues to be a fruitful area of research. The justices resist allowing cameras in their courtroom. They announce their opinions, then simply make copies of their full opinions available to journalists and the public, with no contextualizing information, lay summaries, or other measures directed at making their work more accessible and comprehensible. Yet the justices also engage in considerable off-bench speech that seems clearly designed to buttress the legitimacy of the institution. Glennon and Strother[87] show that the justices' off-bench speech in televised interviews seems designed to maintain institutional legitimacy. This rhetoric can be legitimacy-enhancing, but only if individuals already approve the Court's decisions.[88] Furthermore, in field experimental work, Krewson[89] showed that law students who were exposed to an in-person speech by Justice Sonia Sotomayor reported higher levels of institutional loyalty toward the Court.

The future of the Supreme Court seems inextricably tied to its public perception, which in turn may be a function of its polarized nature, its polarized decisions, and the ongoing crisis of allegedly unethical behavior by the justices. In other research, we add to the literature on the relationship between the Court and the public by connecting this relationship to the institution's ongoing (as of this writing) ethical crisis and decreasing legitimacy.[90] Using data from an original nationally representative survey experiment as well as an original convenience sample survey, we find that there is significant support for such reforms, with term limits ranking as most important among both Democrats and Republicans. A close second is the adoption of ethics codes, which is not necessarily surprising given that the Court *did* adopt a revised code of conduct in the late fall of 2023—but not necessarily to positive reviews (it is still a nonbinding code that must be policed internally). The lack of knowledge about the adoption of ethics reform raises the relevance of another tested reform, adding a public relations office.

We find that other reforms vary in their popularity. Recording oral arguments is a distant third to term limits and the adoption of ethics codes. Adding more justices is a reform that exhibits a sharp partisan split, with Democrats exhibiting more support than Republicans. Interestingly, the addition of a public relations office exhibits a mirror image of this split but in reverse: Democrats are less interested in conveying rulings to the public via a public relations entity, whereas Republicans view this as an attractive option.

Of course, whether such policies produce outcomes that are attractive to reformers is an open question. Both punishing ethical lapses and implementing term limits are political problems that require some amount of self-policing. In the case of the Court, the incentives to change rules or punish norm breakers are weak, which likely implies that the status quo will persist.

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V. Conclusions: The Court and Its Future

A functioning Constitutional court is essential for the stability of representative democracy.[91] Given that the Supreme Court of the United States is institutionally weak relative to Congress and the president by design (e.g., Federalist No. 78), the Court frequently requires the voluntary acquiescence of the public and elected officials for its rulings to take effect.[92] Yet history demonstrates that this voluntary extension of legitimacy toward the Court is far from a given.[93] Perhaps the Court's public perception has historically benefited from a dynamic wherein its landmark rulings were not consistently far out of step with the public mood[94]. This dynamic may no longer apply, given the recent developments in Supreme Court appointments[95] that gave rise to a historic ideological imbalance on today's bench.[96] Many of the Court's recent rulings consolidate considerable authority within the judiciary.[97] Calls for reform now ring out.[98] Thus, the health of America's representative democracy depends in part on better understanding today's Supreme Court.[99]

Despite prominent op-ed arguments claiming otherwise,[100] scholarly evidence demonstrates that in the aggregate, the US Supreme Court is as conservative,[101] pro-religion,[102] and polarized along partisan lines[103] as it has ever been in the modern era. Significant, highly salient rulings punctuate this secular trend, most notably *Dobbs v. Jackson*, which enabled state legislatures to ban abortion for the first time since the 1970s. Emerging evidence suggests that these rulings damaged the Court's legitimacy among the mass public, although the mechanism for this effect remains in dispute.[104] Ongoing controversies regarding unethical lapses in behavior by the justices, particularly Clarence Thomas and Samuel Alito, seem likely to only exacerbate these trends among Democrats and liberals.[105]

We show that one possible consequence of this long trend toward a more polarized and politicized Court is louder calls for structural reform[106] and a parallel shift in scholarly research about the institution. Flagship journals in political science have published few articles analyzing the causes and correlates of Supreme Court decision making since 2018. Instead, scholars appear to be more keenly focused on new avenues of research: (a) the dynamic and evolving relationship between the Court and the public, driven by a concern about institutional legitimacy and the health of American democracy; (b) the strategic interplay between the Court and other branches of government or lower federal courts; and (c) the importance of identity as it relates to the perception of judges and their rulings.

These avenues of inquiry are far from fully explored, and we anticipate much future research along these three veins. Recent methodological and technological developments promise still more innovative avenues for researchers. For instance, the rise of AI, while still in its infancy as of this writing, opens a wide new range of potential research questions as well as possible structural reforms that are directed at the functioning role of the courts. Other computational approaches such as network analysis, machine learning, and text analysis, to name but a few, should also prove fruitful to scholars. In addition to these techniques, scholars should also use qualitative methods to better support their inferences about the Court.

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American democracy faces daunting tests in the coming years on any number of fronts. Yet fatalism from scholars cannot be our discipline's sole response. Taking full advantage of pluralistic methodological approaches, we urge researchers to continue the vital project of better understanding the US Supreme Court and its place in America's system of governance.

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Notes

[1] Richard Bensel, "The Future of Political Science in America" (Paper presented at the 2024 Policy History Studies Conference, Tempe, Arizona, February 2–3, 2024).
[2] Most notably Justice Clarence Thomas' and Justice Samuel Alito's travel, gifts and seeming conflict of interest, but other controversies as well (Melissa Durkee, "The Pledging World Order," University of Georgia School of Law Legal Studies Research Paper No. 4271725).
[3] Legal and ethical rules are self-enforcing at other levels of the federal courts system (Administrative Office of the U.S. Courts 2023) as well as for other branches, such as Congress (Congressional Research Service 2015).
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focus to include subfield journals such as *Journal of Law and Courts, Law & Society Review, Journal of Empirical Legal Studies, Law & Social Inquiry*, etc., we certainly would have uncovered additional themes and topics not addressed here. We limit ourselves to the disciplinary flagship journals to reasonably bound the scope of our inquiry and explore the nature of Supreme Court scholarship published for the broadest possible audiences in the field.

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