

Dissent, Legitimacy, and Public Support for Court Decisions: Evidence from a Survey-Based Experiment¹

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Abstract

Scholars often argue that whereas unanimous rulings should boost public support for court decisions, dissents should fuel public opposition. Previous studies on public responses to U.S. Supreme Court decisions suggest that unanimity does in fact bolster support. However, a recent study also find that dissents may increase support among opponents of a court decision by suggesting evidence of procedural justice. By examining how individuals react to dissents from the Supreme Court of Norway, this article is the first study outside the U.S. context of the public's reaction to unanimity and dissent. Breaking with the common notion of the negative effects of dissent on public support, the article shows that when the Supreme Court handles cases of higher political salience, the formulation of dissenting opinions can be a meaningful way of securing greater support for its policy outputs by suggesting evidence of procedural justice. Contrary to recent studies, however, this positive influence of dissent is irrespective of individuals' ex ante policy views.

Key words: Dissent, Public opinion, Legitimacy, Supreme Court, Issue salience

Introduction

Armed with powers of constitutional review, European high courts have experienced increased political significance (Tate and Vallinder 1995, Hirschl 2004, Sweet 2000, 1992, 2002). The judicialization of European politics has involved an expansion of the power of courts and judges in determining public policy outcomes, mainly through judgments pertaining to individual rights' protection or the limits of legislative or executive powers (Hirschl 2009). Consequently, it is of increasing importance to understand the factors that influence public support or opposition to court decisions.

The extent to which justices agree or disagree on the solution of a case has often been hypothesized as influencing public support.¹ Justices and judicial scholars frequently argue that whereas unanimity should boost public support for court decisions, dissent should fuel public opposition (for an overview, see Zink, Spriggs II, and Scott 2009, Salamone 2014). This alleged negative relationship between dissent and the courts' standing with the public has been one of the reasons why some European constitutional courts used to (or still do) prohibit the publication of dissenting opinions (Kelemen 2018) and that, for those courts that publish dissents, norms of consensus have tended to suppress the formalization of conflicting opinions in an effort to bolster legitimacy (e.g. Walker, Epstein, and Dixon 1988, Hendershot et al. 2013).

Despite the presumed harmful effect of judicial dissent on public support, only a handful of empirical studies from the United States exist on this relationship. The results of these studies are also inconsistent. Whereas some studies show no effect of unanimity or dissent on public opinion (Peterson 1981, Marshall 1987, Gibson, Caldeira, and Spence 2005), other studies suggest that unanimity does in fact bolster support (Zink, Spriggs II, and Scott 2009). In a recent study, however, Salamone (2014) breaks with the accepted notions in the literature and argues that dissents may help increase support of issues of higher salience among the court's policy opponents by suggesting evidence of procedural justice. Hence, the dynamics of how dissent

might influence public support appear contingent upon individuals' preexisting attitudes toward the issues at stake.

This article expands upon the existing research on the relationship between judicial dissent and popular support through a series of original survey-based experiments using a nationally representative sample of Norway's population. The Norwegian Supreme Court offers a relevant and testable European case on the relationship between courts and their citizenry. Unlike several of its European counterparts, the Supreme Court has made individual justice opinions and dissents open to the public since 1863 (Mestad 2015, Østlid 1955). Today, one in five decisions from the court involves one or more dissenting opinions. In addition, during the last few decades, the Supreme Court has emerged as a more prominent and consequential policymaker in the Norwegian judicial and political system (e.g., Grendstad, Shaffer, Waltenburg 2015). We should thus expect the Court to have a greater ability to shape public opinion on issues of national interest. Understanding the potential role dissents play in shaping public opinion and support is an important aspect in this regard.

The article examines the relationship between dissent and public support through a series of vignette experiments covering three fictitious Supreme Court decisions on issues that represent a range of legal and political salience among the Norwegian public: 1) a high-salience asylum decision concerning residence permits for children of illegal immigrants, 2) a medium-salience workplace-privacy decision concerning an employer's right to read email and text messages on phones provided by the company, and (3) a low-salience decision concerning whether neighbor conflicts should be resolved by means of mediation or through litigation in the court system. The vignettes, which presented the outcomes of each of the fictitious decisions, were read by the participants; information about whether the decisions were unanimous or dissensual was randomized. In addition, the experiments were designed to capture

how policy supporters and policy opponents evaluate unanimity and dissent, as well as to account for an individual's diffuse support for the Supreme Court.

Breaking with accepted notions in the literature, the results of the experimental vignettes show no significant influence of unanimous decisions on public acceptance of court decisions. Instead, the results demonstrate that dissent leads to greater acceptance of the high-salience asylum decision by suggesting evidence of procedural justice. This observed effect of dissent on levels of acceptance is significant across both ex-ante supporters and ex-ante opponents, which is contrary Salamone (2014) who shows that dissent primarily has a positive influence on support among ex-ante opponents. However, that dissent has a more general effect on public acceptance is consistent with expectations that individuals' support for policy outputs is rooted in their commitments to democratic values and processes (e.g. Caldeira and Gibson 1992, Gibson and Nelson 2015, Gibson 2007). Finally, the article demonstrates a substantial influence of diffuse support on public acceptance across the three court decisions, which underscores the importance for Supreme Courts to maintain a 'reservoir' of diffuse support or legitimacy if they are to gain acceptance for decisions that are unpopular among segments of the population.

In the following sections, the article first discusses the widespread concerns in the literature about the public policy consequences of dissents while also making a case for why we instead should expect dissents to have a positive influence on public support for court decisions. The article then presents the experimental design and data generation process. Finally, the results of the vignette experiments are discussed, and the conclusion summarizes the article's main contributions and offers suggestions for future studies.

Judicial dissent and public support for court decisions

When high courts review laws, justices must sometimes confront disagreements inherent in the legislative context on issues over which legislators and society may be deeply divided. However, because justices are usually appointed and not elected, they confront these issues

without being electorally accountable. Consequently, scholars often argue, courts, perhaps more than the elected branches of government, require a reservoir of legitimacy and public support to gain acceptance for unpopular decisions (see, for example, Gibson and Nelson 2014, Gibson, Caldeira, and Spence 2005).

Several studies have demonstrated the number of ways in which courts may influence public opinion and support (see, for example, Stoutenborough, Haider-Markel, and Allen 2006, Franklin and Kosaki 1989, Grosskopf and Mondak 1998, Hoekstra and Segal 1996, Johnson and Martin 1998, Clawson, Kegler, and Waltenburg 2001, Gibson and Caldeira 2003, Mondak 1990, 1991, 1992). According to this literature, court decisions, particularly on issues of national interest, may have an impact on public opinion, which can manifest itself either as increased support or increased opposition to the position taken by the court. However, there has been little research on the role of judicial dissent in influencing mass opinion. This is puzzling, given that justices and scholars in the United States and elsewhere have frequently debated whether dissents are good or bad for public support.

On the one hand, judicial scholars frequently express concern about the public opinion consequences of handing down dissensual decisions (see, for example, Hettinger, Lindquist, and Martinek 2006, Wahlbeck, Spriggs, and Maltzman 1999, Walker, Epstein, and Dixon 1988, Zink, Spriggs II, and Scott 2009, Salamone 2014). A common argument is that whereas the absence of dissent may promote the perception that the law is applied in a uniform and impartial manner, the occurrence of dissent may ‘shake public confidence in the judiciary by bringing into question the certainty of the law’ (Walker, Epstein, and Dixon 1988, 387). This alleged negative relationship between dissent and public confidence echoes the widely held view that the legitimacy of high courts is contingent upon the extent to which the public perceives them to be apolitical and neutral adjudicators of the law (see, for example, Scheb and Lyons 2001, Gibson and Nelson 2017). According to these views, dissent should have a generally harmful

effect on public support, and this should be true regardless of whether individuals hold a favorable or unfavorable attitude toward the courts' policy output.

On the other hand, dissent may help democratize a court by bringing different viewpoints to the deliberative process (see, for example, Peterson 1981, Brennan 1985, Dubé 2000). Contrary to conventional views on the harm of dissent, such a democratizing effect of dissents might lead to greater support for dissensual decisions. This argument rests on studies that have demonstrated that legitimacy and support for courts are rooted in commitment to democratic values and processes (Caldeira and Gibson 1992, Gibson and Nelson 2015, Gibson 2007). In addition, studies in the social psychology of law and legal compliance suggest that perceptions of procedural justice and the fairness of the resolution process are central to our evaluation of judicial outcomes (see, for example, Tyler 2006, Tyler and Rasinski 1991, Tyler 1988). Accordingly, when individuals see evidence of debate in court – as shown by dissenting opinions – they might ‘interpret it as the result of a fair, democratic decision-making process in which both sides were heard’ (Salamone 2014, 322). This positive influence of dissent on acceptance might be particularly prevalent among the ‘losers’ of a court decision. Whereas ‘winners’ will ordinarily accept a court decision with which they agree (Gibson and Nelson 2014), losers should be more inclined to make evaluations of procedural fairness when they decide whether to support a decision or not (Lind and Tyler 1988, 111).

Of course, whether unanimity or dissent can influence public support is not expected to be uniform across all issues. The extent to which courts can influence individuals' acceptance of a decision by means of unanimity and dissent should depend on the salience of the issue at hand (see Salamone 2014, Zink, Spriggs II, and Scott 2009). For example, studies of public evaluations of U.S. Supreme Court decisions demonstrate that the Court is less able to influence opinion when a policy is of high ideological salience (Brickman 2006, Grosskopf and Mondak 1998, Hoekstra and Segal 1996, Johnson and Martin 1998, Mondak 1990, 1992, 1991). This

finding is supported by studies in social psychology (e.g. Petty and Cacioppo 1986) and political behavior (e.g. Zaller 1992) demonstrating that individuals are more difficult to persuade when they hold strong (or crystallized) opinions about a topic but are persuadable when they are moderately (or to a lesser degree) engaged with an issue.

On this basis, unanimity and dissent should have little influence on individuals' evaluations of court outputs on highly salient ("hot button") issues on which they hold strong and crystallized opinions. However, on moderately salient issues, unanimity and dissent might invoke a reaction consistent with any of the expectations discussed above. Because of the moderate levels of salience, opinions on these issues should not be so crystallized in the minds of the public that they cannot be moved. However, at the same time, people should feel enough attachment to these issues so that it might matter for them if the decision is made unanimously in their (dis)favor or whether a dissenting minority is seen to represent their policy views. Finally, courts should quite easily be able to move opinion on issues of very low salience, as individuals should be quite willing to defer to perceived experts on matters in which they have not invested much thought. However, as people will be less politically invested in these issues, we should not expect dissent to invoke any strong feelings of procedural justice (see Zink, Spriggs II, and Scott 2009, Salamone 2014).

Previous studies of the public opinion consequences of dissent

Despite widespread concerns about the public policy consequences of dissent, the first few studies on this topic found little evidence of this effect. In a review of the literature on the causes and consequences of judicial dissent in the United States, Peterson (1981) noted that dissent might weaken a court's authority, but he argued that this was unlikely because of the limited public awareness of the workings of the courts. A few years later, Marshall (1987) conducted a study of opinion polls before and after 18 U.S. Supreme Court decisions. Among several factors believed to affect public reactions to court decisions, Marshall included a measure of whether

decisions were unanimous or not. His results showed no significant effect of unanimity on public opinion. However, it should be noted that only two of the decisions in Marshall's sample were unanimous.

Two decades after Marshall's study, Gibson, Caldeira, and Spence (2005) included dissent among several other factors in an experimental vignette study about a fictional case dealing with the handling of the Florida ballots in the wake of the 2000 presidential election. Unlike Marshall (1987), the authors focused on factors affecting public acquiescence to court decisions. For the specific manipulation of dissent, the participants were given vignettes characterized either as "deeply divided along partisan lines" or as "consensual and therefore not divided by party". Again, however, the results showed little evidence for the hypothesis that sharp divisions lead to lower acceptance of the outcomes of court decisions.

Two subsequent experimental studies would yield different (though conflicting) results. In the first experiment, Zink, Spriggs II, and Scott (2009) presented individuals with mock newspaper articles reporting on Supreme Court decisions in which they systematically varied unanimity and dissent and the court's upholding or overturning precedents. Unlike Gibson, Caldeira, and Spence (2005), the authors included a manipulation for dissent independent of partisanship (i.e., "unanimous" or "minimum winning coalition"). In addition, they conducted experiments on a range of cases on different political issues of varying levels of salience. Contrasting previous studies, they found that unanimous rulings (as opposed to dissenting ones) boost support for Supreme Court decisions at all levels of salience and among all participants, including those who disagreed with the court's policy output.

In a second experiment, Salamone (2014) sought to improve on the two former studies by examining the influence of unanimity and dissent in isolation from other factors. In addition, Salamone considered the distinction between large and small dissenting majorities by separating out decisions that were unanimous, divided eight-to-one, or divided five-to-four. The

results of the study showed no effect of unanimity or dissent among those who stated that they agreed with the policy outcome of the court's decisions. However, among those who disagreed with the court's policy outcome, Salamone found that unanimity and large majorities led to higher acceptance of the low-salience contract dispute resolution and, conversely, that dissensual decisions (including both five-to-four and eight-to-one decisions) led to higher acceptance among the court's opponents in a moderately salient workplace-privacy decision by suggesting evidence of procedural justice.

Overall, recent experimental studies demonstrate that unanimity (as opposed to dissent) might foster higher levels of acceptance of Supreme Court decisions (in particular, Zink, Spriggs II, and Scott 2009), though this appears to be the case primarily with issues of low salience (Salamone 2014). In addition, Salamone's (2014) study suggests that we should include the possibility that dissent may foster greater levels of support for moderately salient issues by suggesting evidence of procedural justice.

The Supreme Court of Norway and the public

Little research exists on the relationship between dissent and public opinion and support outside the U.S. context. In this regard, the Supreme Court of Norway constitutes a relevant and testable European case. The Supreme Court began to publish individual justice opinions, including those supporting dissents, in 1863 (Mestad 2015). The decision to publish individual opinions did not come about without debate. For over four decades, the Supreme Court fought against proposals in parliament to make opinions public. A central reason for the court's resistance was that it had serious concerns about its reputation with the public (Østlid 1955).

The number of dissents in the Supreme Court has varied over time. In the decades following World War II, the annual percentage of dissensual decisions fluctuated between 10 and 20% before reaching its lowest level in the late 1980s (Grendstad, Shaffer, and Waltenburg 2015, 69). Then, during the last two decades, the number of dissents increased in the 1990s,

reaching a record high of 29% in 1999, before stabilizing at a rate of 20% annually in the twenty-first century. The rise in dissents in the 1990s was mainly catalyzed by a reform of the criminal procedures in 1995, which secured the Court near-complete discretionary jurisdiction over its criminal caseload (Bentsen 2017). Since then, the court has only accepted cases for review that are expected to be instrumental to the development of Norwegian law (Bentsen 2017, Skiple et al. 2016, Sunde 2015, Grendstad, Shaffer, and Waltenburg 2015).

Citizens usually rely on the media for information about court cases (Stoutenborough, Haider-Markel, and Allen 2006, Zilis 2015, Clawson, Kegler, and Waltenburg 2001). Historically, the Norwegian media's coverage of the Supreme Court has been irregular and sporadic (Grendstad, Shaffer, and Waltenburg 2017). The depoliticized nature of judicial appointments to the court has been identified as a central reason for this.² In addition, because the Norwegian legal system is highly trusted, the Supreme Court justices have seen little need to use the media to maintain or increase the Court's standing among its citizens (Grendstad, Shaffer, and Waltenburg 2017). Hence, it is reasonable to assume that the public has been unaware of the daily workings and decisions of the Supreme Court.

However, in the last few decades, the Supreme Court has emerged as a more prominent and consequential policymaker in the Norwegian judicial and political system (e.g., Grendstad, Shaffer, Waltenburg 2015). Consequently, it has come under greater scrutiny by the media. In particular, in their reporting on the Supreme Court, the media has given greater attention to individual justices, and this appears especially true when referencing those justices authoring or joining dissents (Grendstad, Shaffer, and Waltenburg 2017, 249). Therefore, we can assume that today's Supreme Court will have a greater potential to shape public opinion on issues of national interest. Understanding the role dissents play in shaping public opinion and support is an important aspect in this regard.

Experimental design

To examine the relationship between Supreme Court dissent and public support, I use a series of survey-based vignette experiments included in Wave 7 of the Norwegian Citizen Panel (NCP) conducted from November 1 to December 2, 2016. The NCP is a research-purpose web-based panel owned by the University of Bergen. The participants in the NCP have been recruited via random sampling from the official national population registry and are representative of both the online and offline population older than 18 years of age in Norway. In total, the data for the present experiment comprises 1085 registered participants.³

The experimental survey covered three issue areas that represent a range of legal and political salience among the Norwegian public: a *high-salience* asylum decision concerning the issuing of residence permits for children of illegal immigrants that are being deported, a *medium-salience* workplace-privacy decision concerning an employer's right to read the emails and text messages on a phone provided by the company, and a *low-salience* decision concerning whether neighbor conflicts should be resolved by means of mediation or through litigation in the court system. Whereas asylum issues – particularly those involving the rights of children – have been of high salience in Norwegian public debate in the aftermath of the European 'refugee crisis' of 2015 (see Skiple, Gudbrandsen, and Grendstad 2013), the other issue areas were selected based on their relative degree of public salience. This difference in issue area and salience is important in order to address the differential influence of unanimity and dissent on public opinion discussed above.

In total, the experiment comprised two parts: (1) a pretreatment questionnaire asking the participants about their policy positions on the above three issues and about their diffuse support (or legitimacy) of the Supreme Court, and (2) a series of vignettes describing fictitious Supreme Court decisions, including a post-treatment question about the participants' acceptance of the decisions. Prior to the experiment, the participants were asked to read the following short text

about the Supreme Court: *“You will now be asked a few questions about the Norwegian Supreme Court. The Supreme Court is the highest court in the country and last court of appeal. Ordinary cases are usually decided by a panel of five justices.”* This information was provided because we may assume that several of the participants in the survey were unaware of the fact that most Supreme Court decisions are made by five-justice panels. (A complete and translated overview of the pretreatment questionnaire and of the experimental vignettes is available in the appendix).

Pretreatment questionnaire

Prior to treatment, all participants were first asked questions about their policy positions on the three separate issues (these questions can be found in the appendix, section A). To avoid priming the participants, these questions were asked together with a range of other unrelated questions in the survey (this procedure is similar to Salamone 2014). That said, we are unable to fully eliminate the possibility that individuals, by virtue of already having declared their attitudes on the issues earlier in the survey, have been put in a position of reconciling their attitudes with the position of the Supreme Court and thus chose their own position over the position of the Supreme Court. However, this type of priming should not negatively influence treatment effects, given that in a situation in which individuals are fully primed to follow their ex-ante positions, we should not expect unanimity or dissent to have any substantial influence on their opinions. In other words, if individuals are primed to follow their initial policy position, the experiment should constitute a stricter test of the influence of unanimity and dissent.

The answers to the ex-ante policy questions were later used to create measures indicating whether the position of a participant prior to treatment was the same as that described in the vignette randomly assigned to her (or not). Accordingly, if a participant was given a vignette of a Supreme Court decision reflecting her policy positions on the issue, she is

considered an *ex-ante supporter* of the decision. If a participant was given a vignette with a Supreme Court decision opposing her policy position, she is considered an *ex-ante opponent*.

TABLE 1 ABOUT HERE

Table 1 shows the distributions of the participants' responses to the three policy statements. As expected, we can see that the participants are highly polarized in their position on the high-salience asylum issue, while the medium-salience workplace-privacy issue and the low-salience neighbor dispute issue produce less polarization. Looking at the proportions of participants agreeing or disagreeing, 39% agree that children of illegal immigrants should be allowed to stay in Norway if their parents are evicted, while 44% disagree with this statement. On the workplace-privacy issue, 21% agree that employers should have a right to read texts and emails on company cell phones, while 72% disagree. Finally, as many as 91% of the participants agree that neighbor conflicts ought to be resolved by mediation and not in the courts, while only 4% disagree.

In addition to the questions about their policy preferences, the participants were given four questions about the Supreme Court's institutional legitimacy (the questions can be found in the appendix, section A). These questions are designed to capture the participant's *diffuse support* for the institution (Caldeira and Gibson 1992, Gibson, Caldeira, and Spence 2003, 2005) and are commonly used in the literature on judicial support and legitimacy (see, for example, Gibson and Caldeira 1995, Zink, Spriggs II, and Scott 2009, Salamone 2014, Gibson and Nelson 2015, Bartels and Johnston 2013).⁴ Whereas specific support refers to the court's decisions (i.e., what they in this experiment are asked to evaluate), diffuse support refers to a reservoir of good will or favorable attitudes that help individuals tolerate outputs that they oppose (Gibson, Caldeira, and Spence 2003, Easton 1965, 1975, Gibson and Nelson 2014).

Caldeira and Gibson (1992) conceptualize diffuse support for judicial institutions as synonymous with legitimacy. This is an important control in the analysis because we should assume that those with low faith in the institution would generally have a lower likelihood of accepting its decisions (e.g., Gibson, Caldeira, and Spence 2005) and that this should be true regardless of whether the decision is unanimous or dissensual (Salamone 2014).

Experimental vignettes

After completing the pretreatment questionnaire, the participants were exposed to a series of vignettes about three fictitious Supreme Court decisions on the above issues (the vignettes can be found in the appendix, section B).⁵ The participants were randomly assigned to three groups: a baseline group in which participants were given no information about unanimity or dissents; a treatment group presented with a unanimous decision; and a treatment group presented with a dissensual three-two decision (i.e., the experiment is a 2x2 with a baseline group). In addition, the experiment randomly varied the outcome of the decision in order to control for the possibility that the results are driven by the participants' policy preferences for or against the decision.

For each vignette, the participants were asked about the degree to which they find the decision acceptable (coded 1 to 5, with larger scores indicating greater acceptance). This is in line with a common research design in the literature on courts and public opinions, which usually involves presenting individuals with a court decision with which they either agree or disagree and then ascertaining whether the characteristics of the court ruling increases the probability of an individual accepting the decision or not (e.g., Salamone 2014, Gibson, Caldeira, and Spence 2005, Zink, Spriggs II, and Scott 2009).⁶ The wording of the experimental vignettes was as follows (the following example is for the asylum decision):

Several immigrant children have parents who are residing illegally in Norway. Imagine that the Supreme Court [no information; unanimously; by a bare majority of three against two judges] decided that these children [should be; should not be] entitled to stay in Norway if the parents are deported. In general, to what extent do you think this would be an acceptable decision by the Supreme Court?

Analysis and results

To examine the relationship between dissent and public support, I ran two sets of logistic regression analyses of the extent to which individuals accept or reject each of the three fictitious court decisions. Whereas the first set of analyses examines the effects of the main treatment (unanimity/dissent), the second set of analyses tests whether unanimity and dissent have a differential influence on acceptance rates among ex-ante supporters and ex-ante opponents.

Positive influence of dissent on acceptance of high-salience issues

The first sets of analyses examine the general influence of the treatments (unanimous/dissent) when controlling for diffuse support. For each decision, the analyses compare the effect of each treatment category to the baseline referent category for which the participants received no information regarding majority size. The results of the regressions are shown in Table 2. In addition, Figure 1 presents the change in terms of the probability of acceptance of each of the court decisions for the various treatment groups compared with the untreated baseline group.

TABLE 2 ABOUT HERE

Looking at the treatment effects of unanimity and dissent, there are no negative effects of dissent on levels of acceptance for any of the three decisions. Instead, there is a positive and

statistically significant effect of dissent on participants' acceptance of the high-salience asylum decision. More specifically, there is a 9% increase in the levels of acceptance of the dissensual decision when compared to the levels of support in the untreated baseline group. This finding supports the alternative theoretical expectation that dissensual decisions might lead to greater levels of acceptance by suggesting evidence of procedural justice (e.g., Salamone 2014).

FIGURE 1 ABOUT HERE

The effects of the treatments on the two other issues indicate further support for this finding. There is a 4% increase in the acceptance of the dissensual privacy decision and a close to 4% increase in acceptance of the dissensual neighbor conflict decision. However, the differences in acceptance rates across these treatment groups fail standard statistical significance tests. Thus, it is only on the high-salience asylum issue that dissent has any positive and generalizable influence on citizens' acceptance of the court decision.

The results show some support for the hypothesis that unanimity might foster greater acceptance of the asylum decision and the neighbor conflict decision. There is a 5% increase in acceptance of the unanimous asylum decision and a 5% increase in support for the neighbor conflict decision (when compared to the untreated baseline group). However, these differences fail statistical significance tests, and we are unable to conclude whether this is in fact the case for the public at large. Nevertheless, these findings are important insofar as they suggest that individuals' evaluations of the court's policy output do not appear to increase significantly because of unanimity.

Lastly, there is a positive and statistically significant influence of diffuse support on acceptance rates across the three court decisions. Hence, when citizens are asked to evaluate Supreme Court decisions, they will have a greater propensity to accept the decision if they have

a high regard for the Supreme Court as an institution from the outset. This is an important finding insofar as it confirms the theoretical assumptions and findings in the previous empirical literature that high courts rely on diffuse support to gain acceptance of their decisions (e.g., Zink, Spriggs II, and Scott 2009, Gibson, Caldeira, and Spence 2005).

Ex-ante policy views

In the second set of analyses, I include interaction terms between the treatments and the variable capturing whether individuals are either *ex-ante supporters* or *ex-ante opponents* of the decision. These interactions are included to test whether unanimity or dissent have a different influence on acceptance rates among ex-ante supporters and ex-ante opponents. Note, however, that individuals' support or opposition to the decisions is not randomly assigned. While we are able to randomize whether individuals are given a favorable or unfavorable decision based on their pre-existing attitudes, we are naturally unable to randomize individuals' pre-existing policy positions on these issues. Consequently, a number of covariates might predict the ex-ante policy views that form the basis for the agreement determination. The following analysis thus includes a number of control variables related to partisanship (i.e., whether they would vote for either a left-of-center or a right-of-center party in the next election) and sociodemographic factors (i.e., the participants' gender, education and age), which might be related to the participants' pre-existing policy positions on the three issues.

TABLE 3 ABOUT HERE

The results of the second sets of regressions are presented in Table 3. First, we see that there is a statistically significant and substantial influence of ex-ante policy positions on acceptance across all three decisions. Because of the added interaction term, the effects of the *Ex-ante opponent* variable are interpreted as the difference in acceptance between ex-ante

opponents and ex-ante supporters in the baseline group: for this treatment group, ex-ante opponents have a 53% lower level of acceptance for the asylum decision when compared to ex-ante supporters. For the privacy and neighbor conflict decisions, the difference in acceptance between supporters and opponents is 61% and 68%.

However, although there is a large difference between ex-ante supporters and ex-ante opponents in their post-treatment evaluations of all three court decisions, there are no statistically significant effects of the added interaction terms between the treatments (unanimous/dissent) and the participants' ex-ante policy views. Hence, the extent to which unanimity or dissent influences acceptance rates across the three issues is not conditional on whether individuals are predisposed to either support or oppose the decisions they were asked to evaluate.

FIGURE 2 ABOUT HERE

Again, there is statistically significant effect of diffuse support on acceptance rates across all issues. Figure 2 shows the levels of acceptance for each decision conditional on the participants' pretreatment policy views. Among both ex-ante supporters and ex-ante opponents, the levels of acceptance of each court decision increases as the levels of diffuse support increases. If we look specifically at ex-ante opponents, the influence of high levels of diffuse support is strongest among those who were given the high-salience asylum decision. For this decision, acceptance levels are almost 50% higher among those who hold the Court in the highest regard when compared to those who hold it in very low regard. Consequently, when citizens are asked to evaluate unfavorable and politically salient Supreme Court decisions, they will have a greater propensity to accept the decision if from the onset they have a high regard for the Supreme Court as an institution.

Discussions and conclusion

As European courts are experiencing growing political power (e.g., Tate and Vallinder 1995, Hirschl 2004, Sweet 2000, 1992, 2002), it is of increasing importance to understand what factors influence popular support or opposition to court decisions. One important aspect in this regard concerns the public's evaluations of unanimity and dissent. However, despite widespread concerns about the public policy consequences of dissents, the literature on the relationship between dissent and public opinion is sparse and limited to the U.S. public's evaluations of Supreme Court decisions.

This article offers the first study of public reactions to judicial dissent outside the U.S. context by conducting a series of survey-based vignette experiments on a nationally representative sample of Norway's population. The vignettes covered three fictitious Supreme Court decisions on issues that represent a range of legal and political salience among the Norwegian public. In addition, the experiment was designed to capture how policy supporters and policy opponents evaluate dissensual decisions in order to test the alternative expectation that policy opponents might show greater support for a dissensual decision because they see their policy views represented in the outcome.

Breaking with accepted notions in the literature, the experimental results show no significant influence of unanimous decisions on public acceptance of court decisions. In addition, there is no evidence in the experimental data suggesting that dissent has a negative influence on people's support for court decisions. Instead, the results demonstrate that dissent leads to greater acceptance of the high-salience asylum decision by suggesting evidence of procedural justice. This observed effect of dissent on levels of acceptance is significant across both ex-ante supporters and ex-ante opponents, which is contrary to the expectation that opponents (or 'losers') of a court decision should be more inclined than supporters ('winners') to make evaluations of procedural justices when they decide to oppose a decision or not. This

is also contrary to the experimental results by Salamone (2014), which shows that dissent primarily has a positive influence on support among ex-ante opponents. However, that dissent has a more general effect on public acceptance is consistent with expectations that individuals' support for policy outputs is rooted in their commitments to democratic values and processes (e.g. Caldeira and Gibson 1992, Gibson and Nelson 2015, Gibson 2007).

Dissent only moves opinion on the high-salience asylum issue, which is contrary to the theoretical expectation that courts should have a difficult time influencing public opinion on “hot button” issues on which individuals hold strong and crystallized opinions. There are two potential explanations for this result. First, we might assume that when the public is highly polarized on an issue, which is arguably the case concerning the rights of immigrant children in Norway, they might expect justices to be polarized on the issue as well. Evidence that both sides of the issue have been heard – as shown by the dissenting opinion – should therefore matter more when public opinion is polarized. To put it more succinctly, procedural justice might play a greater role in the evaluations of court decisions on issues on which the public is polarized, which might explain why dissent leads to greater levels of acceptance of the high-salience asylum decision. Future studies could address the relationship between issue polarization and procedural justice more directly.

The second explanation regards the relative salience of the asylum issue. Although questions about the rights of immigrant children have been of high salience in Norwegian public debate in the wake of the 2015 European ‘immigration crisis’, it might be considered less salient that those “hot-button” issues included in existing experimental studies in the United States (e.g., gay marriage, Florida ballots, abortion). This is especially true if we consider the decisive role the U.S. Supreme Court plays in deciding these issues. Hence, the observed effect of dissent on individuals' acceptance of the asylum issue might instead be regarded as evidence that courts

should have an easier time moving public opinion on moderately salient issues on which opinions are not fully crystallized in the minds of the public.

In addition to the effects of dissent on acceptance rates, there is a substantial influence of diffuse support on public acceptance across the three court decisions. Most importantly, there is a relatively strong influence of high levels of diffuse support on acceptance rates among ex-ante opponents of the high-salience asylum decisions. This is an important finding insofar as it confirms the theoretical assumptions and findings in the previous empirical literature that high courts rely on diffuse support to gain acceptance of unpopular decisions (e.g., Zink, Spriggs II, and Scott 2009, Gibson, Caldeira, and Spence 2005). Moreover, this result underscores the importance for Supreme Courts to maintain a ‘reservoir’ of diffuse support or legitimacy if they are to gain acceptance for decisions that are unpopular among segments of the population.

Finally, as this is the first empirical study outside the U.S. context to suggest that dissent may bolster public acceptance of court decisions, the constraints of this one-time experiment still leave unanswered questions about the long-term effects of unanimity and dissents. While one possible implication of this study is that courts in the long term might bolster their legitimacy by means of publishing dissents, more research on such a long-term view would need to be considered if we are to reach this conclusion.

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Tables and figures

Table 1: Individuals' Ex-Ante Policy Positions

	Agree	Disagree	Neither, Nor
Immigrant children whose parents are illegal residents in Norway should be entitled to stay if their parents are deported.	39%	44%	17%
If an employer gives you a cell phone to be used for work, the employer should be allowed to read all text messages and emails sent and received on this phone.	21%	72%	7%
It should not be possible to bring neighbor conflicts (for example, about the height of trees and fences) to the court without first having tried to resolve the conflict through mediation.	91%	5%	4%

Note: The variables were coded on a seven-point scale: 1=strongly agree, 2=agree, 3=somewhat agree, 4=neither agree nor disagree, 5=somewhat disagree, 6=disagree, and 7=strongly disagree. Data: Norwegian Citizen Panel Wave 7, 2016. N=1085.

Table 2: Dissent has a positive effect on support for asylum decision

	Asylum decision	Privacy decision	Neighbor decision
Treatments			
Unanimous	.24 (.16)	.06 (.15)	.22 (.16)
Dissent	.40* (.16)	.16 (.16)	.15 (.15)
Controls			
Diffuse support	.49* (.07)	.30* (.06)	.40* (.07)
Intercept	-2.7* (.35)	-1.5* (.34)	-2.2* (.35)
Pseudo R ²	.05	.02	.03
N	1046	1034	1030

*p<.05 (two-tailed). Note: Effects of unanimity and dissent on support for court decisions. Effects compared to baseline group. Data: Norwegian Citizen Panel Wave 7, 2016.

Table 3: No conditional effects of ex-ante policy views

	Asylum decision	Privacy decision	Neighbor decision
Main effects			
Unanimous	.50 (.33)	.06 (.29)	.50 (.33)
Dissent	.49 (.32)	.04 (.29)	.56 (.32)
Ex-ante opponent	-2.5* (.31)	-3.2* (.31)	-3.6* (.33)
Interactions			
Unanimous* Ex-ante opponent	-.56 (.44)	.06 (.43)	-.13 (.49)
Dissent* Ex-ante opponent	-.05 (.43)	.47 (.43)	-.43 (.46)
Controls			
Diffuse support	.60* (.10)	.37* (.09)	.57* (.10)
Partisanship	.12 (.18)	-.05 (.19)	-.18 (.21)
Gender	-.60* (.18)	-.70* (.18)	-.47* (.20)
Education	.03 (.03)	.01 (.03)	.11* (.03)
Age	.04 (.06)	-.03 (.06)	-.16* (.06)
Intercept	-2.0* (.58)	-.04 (.55)	-1.3* (.63)
Pseudo R ²	.29	.31	.40
N	804	888	906

*p<.05 (two-tailed). Note: Effects of unanimity and dissent on support for court decisions conditional on ex-ante policy views. Effects compared to baseline group. Data: Norwegian Citizen Panel Wave 7, 2016.

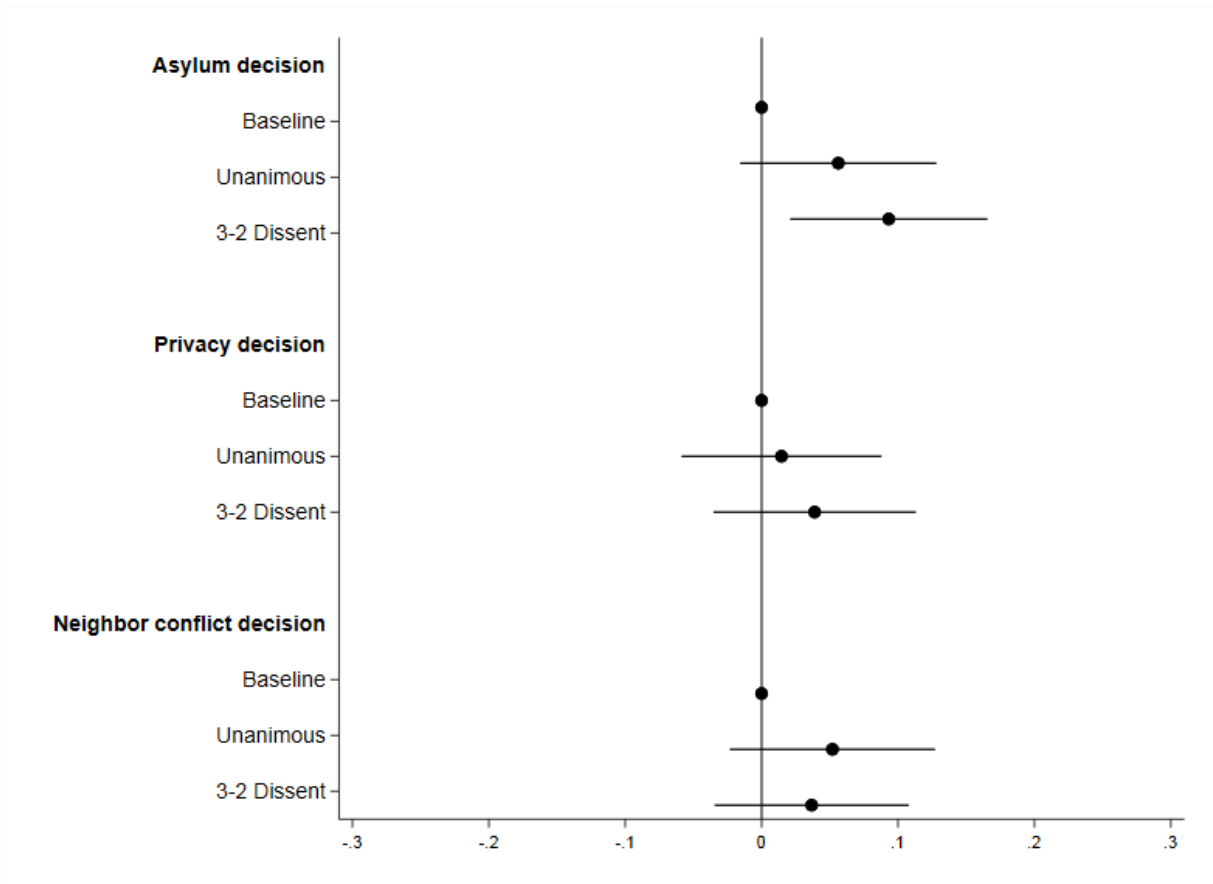


Figure 1: Change in the probability of acceptance across treatment groups for each of the three court decisions (95% confidence intervals). Data: Norwegian Citizen Panel Wave 7, 2016.

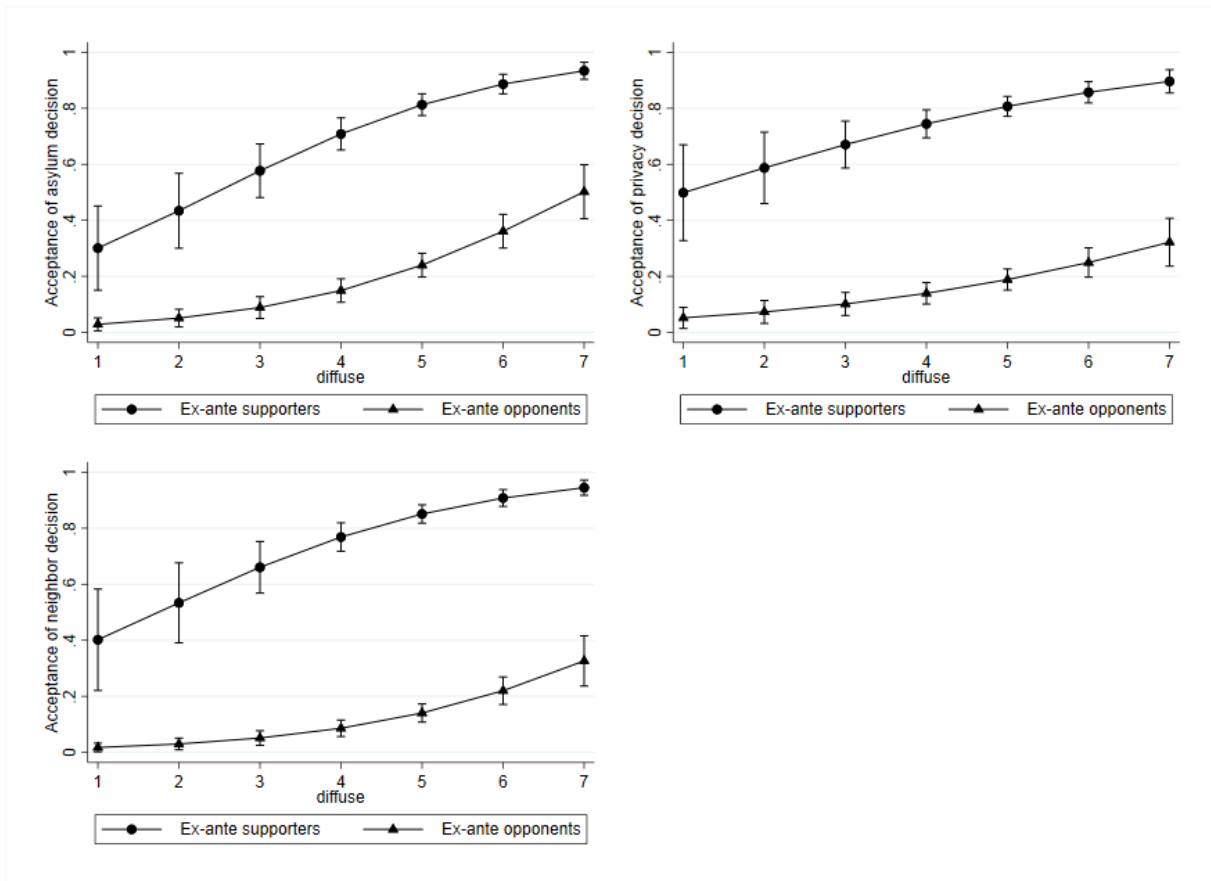


Figure 2: Effects of diffuse support on ex-ante supporters' and ex-ante opponents' acceptance of the asylum decision (upper left graph), the privacy decision (upper right graph), and the neighbor conflict decision (lower left graph) (95% confidence intervals). Data: Norwegian Citizen Panel Wave 7, 2016.

Appendix

A. Pre-Treatment Questionnaire

For each question, the participants were asked to what extent they agree or disagree with the statement. Their answers were measured on a scale from one (strongly agree) to seven (strongly disagree).

1.1. Ex-ante policy positions

In general, to what extent do you disagree or agree with the following statements?

1. Immigrant children whose parents are illegal residents in Norway should be entitled to stay in the country if their parents are deported.
2. If an employer gives you a mobile phone to be used for work, the employer should be allowed to read all text messages and emails sent and received on this phone.
3. It should not be possible to bring neighbor conflicts (for example, about the height of trees and fences) to the court without first having tried to resolve the conflict through mediation.

1.2. Diffuse support for the Supreme Court

In general, to what extent do you disagree or agree with the following statements?

1. The Supreme Court of Norway can usually be trusted to make the right decisions.
2. The right of the Supreme Court of Norway to decide certain types of controversial issues should be reduced.
3. The decisions of the Supreme Court of Norway consistently favor some groups more than others.
4. If the Supreme Court of Norway started making many decisions most people disagreed with, it might be better to do away with the court altogether.

B. Experimental vignettes

For each vignette, the participants were asked about their *acceptance* of the fictitious court decision. This was measured on a scale from 1 to 5, where higher values indicate greater levels of acceptance.

2.1. Vignette for high-salience decision

Several immigrant children have parents who are residing illegally in Norway. Imagine that the Supreme Court [**no information, unanimously, or by a bare majority of three against two judges**] decided that these children [**should be or should not be**] entitled to stay in Norway if their parents are deported. In general, to what extent do you think this would be an acceptable decision by the Supreme Court?

2.2. Vignette for medium-salience decision

Several employers give their employees cell phones to use for work. Imagine that the Supreme Court [**no information, unanimously, or by a bare majority of three against two judges**] decided that employers [**should be or should not be**] allowed to read all the text messages and emails contained on the telephones issued to the employees by the company. In general, to what extent do you think this would be an acceptable decision by the Supreme Court?

2.3. Vignette for low-salience decision

Thousands of neighbor conflicts arise in Norway every year. Imagine that the Supreme Court [**no information, unanimously, or by a bare majority of three against two judges**] decided that people involved in neighbor conflicts (for example, about the height of trees and fences) [**should be or should not be**] allowed to go directly to the courts without first having tried to resolve the conflict through mediation. In general, to what extent do you think this would be an acceptable decision by the Supreme Court?

Notes

¹ Terms like ‘support’, ‘acquiescence’, ‘confidence’ and ‘legitimacy’ are used interchangeably throughout the article depending on the terms used in the relevant literature.

² Upon the appointment of a new justice, an independent Judicial Appointments Board, consisting of five representatives from the legal community and two lay members, will evaluate applicants and send a ranked list to the Ministry of Justice. The ministry will then transmit its preferred nominee to the King in Council for a formal (and symbolic) appointment. Although the ministry is not obliged to follow the board’s ranking, it has made no changes to its ordering.

³ For more information about the Norwegian Citizen Panel, see <http://digsscore.uib.no/panel>. Documentation of the field methods used, response rates, and representativeness is reported in the online methodology report, while the data and codebook are available gratis from the Norwegian Centre for Research Data (NSD). Data and documentation can be downloaded from <http://digsscore.uib.no/data-and-documentation>. A Stata script for the replication of the study is also available.

⁴ I made a change to the wording of one of the statements used to capture diffuse support in previous studies of the U.S. Supreme Court. It is common to ask individuals to evaluate the following statement: *The United States Supreme Court can usually be trusted to make decisions that are right for the country as a whole*. When designing the experiment, concerns were raised about the extent to which Norwegian citizens would ever expect the Supreme Court to make decisions for the *country as a whole* (the Norwegian Supreme Court does not usually make decisions as far-reaching as those of the U.S. Supreme Court). Thus, a simplified version of the question was included, stating that *The Supreme Court of Norway can usually be trusted to make the right decisions*.

⁵ The use of fictitious cases might lead to a lower external validity of the results. Hence, in an effort to minimize issues of external validity, the selected issues were loosely based on actual and potential court cases.

⁶ Unlike similar studies by Salamone (2014) and Zink, Spriggs II, and Scott (2009), I do not ask individuals whether they agree (or not) with the decision before asking about the extent to which they accept the decision. Instead, I ask individuals directly about their acceptance of the decision, assuming that those who receive a decision that is contrary to their previously stated policy position on the issue are in fact in disagreement with the outcome of the decision. Another difference from previous studies concerns how I ask individuals about acceptance. The most common question in the literature asks, *“Do you accept the decision? That is, do you think that the decision ought to be accepted and considered the final word on the matter or that there ought to be an effort to challenge the decision and get it changed?”* Again, in the preparations for the experiment, concerns were raised about the extent to which Norwegian citizens would ever feel that there are ways to challenge a Supreme Court decision. Following this discussion, a simplified version of this question was developed, asking only *“Generally speaking, to what extent do you mean this would be an acceptable decision by the Supreme Court?”*