

2017

The relationship between the American public and demographics on the Supreme Court: an investigation of “The Harvard- Yale-ification of the Supreme Court.”

<https://hdl.handle.net/2144/21829>

Downloaded from DSpace Repository, DSpace Institution's institutional repository

**The Relationship Between the American Public and
Demographics on the Supreme Court: An
Investigation of “The Harvard-Yale-ification of the
Supreme Court.”**

by

Julia M. Cohen
Undergraduate Honors Thesis
Department of Political Science
Boston University, 2017

Abstract

There are currently only two law schools represented on the Supreme Court: Harvard and Yale. This research looks to examine this recent narrowing of educational and professional backgrounds on the Supreme Court of the United States of America. Specifically, this paper looks to examine the influence the public has on Supreme Court nominations and the intricacies of public opinion surrounding potential judicial nominees. This is done by drawing from both literature reviewing the influences on Supreme Court nominations and through conducting a public opinion survey on related topics. Through analyzing this prior research and the survey results together it becomes clear that while it is problematic that there are only two law schools represented on the Supreme Court, the public has mixed views on this relative narrowing in diversity.

Introduction

Conversation surrounding Mr. Neil Gorsuch's qualifications and previous legal decisions became commonplace in the days and months following his nomination to the bench by President Trump in February 2017. A part of this conversation concerned the demographics, and thus diversity, in political institutions. The Legislative and Executive branches are both large bodies of lawmakers and politicians, and thereby lend themselves to diversification. In contrast, it can be difficult to discuss increasing diversity amongst those on the Supreme Court as it is composed of merely nine people. It is nonetheless notable that in the past two decades the gender and racial diversity of the composition of the bench has skyrocketed. Currently, three women sit on the bench and two out of nine are people of color. However, gender and race are not the only ways in which a group of people can be diverse.

Despite the increase in gender and racial diversity, the court has seen the professional and educational history of the justices narrow severely. In fact, it has narrowed so drastically that of the nine sitting justices, only two law schools are represented: Harvard and Yale. Historically, this has not always been the case. "In the history of the court," says John Schwartz in his analysis of this phenomenon for the *New York Times*, "half of the 110 justices were undergraduates, graduates or law students in the Ivy League; since 1950, the percentage is 70. From the beginning of the 20th century, every president who has seated a justice has picked at least one Ivy graduate."¹ Catherine Rampell further accentuates how "ivy-saturated" the court has become, stating that since 1956, "there have never been fewer than three justices from Harvard or Yale sitting on the court at any given time. And since 1988, Harvard and Yale alumni together have

¹ Schwartz, John. "An Ivy-Covered Path to the Supreme Court." *The New York Times*. The New York Times, 08 June 2009. Web. 04 May 2016. <http://www.nytimes.com/2009/06/09/us/politics/09ivy.html>

consistently represented a majority of the court.”² This is to say that Supreme Court justices recently considered for nomination have, almost without exception, all attended either Harvard or Yale law schools. Unsurprisingly, the former professional experiences of the sitting justices are similarly limited. Currently seven out of nine justices served on a U.S. appellate court, while solely Justice Elena Kagan previously served as Solicitor General.³ This, again, has not historically always been the case. “Justices used to come from more varied professional backgrounds,” writes Adam Liptak, a Supreme Court reporter for The New York Times, “They had often been governors, lawmakers, cabinet members, law professors, practicing lawyers or state court judges. As late as 1972, when Justice William H. Rehnquist joined the court, former federal judges were in the minority.”⁴ These numbers indicate a predictable professional and educational path to the Supreme Court has been established in the last 30 to 40 years. Mr. Neil Gorsuch, President Trump’s pick to replace Antonin Scalia on the court, is no exception to this, having graduated from Harvard Law School and having most recently served on the 10th U.S. Circuit Court of Appeals. Mr. Trump has not broken ranks with his predecessors. In fact, of President Obama’s three nominees to the Supreme Court throughout his administration, two graduated from Harvard and the other from Yale.

Why, then, has the path to the Supreme Court narrowed so severely? The literature concludes that Presidents continue to pick candidates from the narrow pool of those educated at

² Catherine Rampell, "Yale, Harvard Law Taking Over Supreme Court," The New York Times, July 16, 2010, , accessed April 24, 2017, https://economix.blogs.nytimes.com/2010/07/16/yale-harvard-law-taking-over-supreme-court/?_r=0.

³ Kristen Bialik, "What backgrounds do U.S. Supreme Court justices have?," Pew Research Center, March 20, 2017, , accessed April 24, 2017, <http://www.pewresearch.org/fact-tank/2017/03/20/what-backgrounds-do-u-s-supreme-court-justices-have/>.

⁴ Adam Liptak, "Sonia Sotomayor and Elena Kagan Muse Over a Cookie-Cutter Supreme Court," The New York Times, September 05, 2016, , accessed April 24, 2017, <https://www.nytimes.com/2016/09/06/us/politics/sotomayor-kagan-supreme-court.html>.

either Harvard or Yale because they believe that having attended these schools is shorthand for being extremely intelligent and qualified. As the Supreme Court confirmation process has become increasingly partisan and difficult, Presidents look to nominate candidates that they believe can reasonably pass the Senate. In theory, having elite credentials gives the opposition party one less quality to question in hearings. Furthermore, research points to the public being the driving force behind Senators decisions on the confirmation of Supreme Court nominations. This would mean, then, that Presidents make the assumption that one of the qualities the public wants to see on the court is not just an elite law degree, but one specifically from Harvard or Yale. Presidents continually choose not to diversify the previous career paths or educational credentials when choosing a Supreme Court nominee because they do not think this is an issue the public cares about.

In this paper I, therefore, look to answer two questions. Firstly, I consider how the public evaluates candidates based on their educational and professional backgrounds in order to determine whether a Harvard or Yale law degree does in fact bolster a nominee's chances at passing the Senate. Additionally, I look at the specifics of how the public thinks about diversity generally on the Supreme Court. Secondly I ask if it concerns the public that there is a lack of professional and educational diversity on the court. I point first to coverage in the Media and amongst journalistic experts to show that debate surrounding this issue has greatly increased in the past decade and thus the public are likely more concerned about this issue than assumed. Further, I address these questions by conducting a multi-part public opinion survey and by relying on relevant literature. The survey attempts to evaluate both at a surface and subversive level of public thinking about the educational credentials of a Supreme Court nominee, which court demographics the public put the most emphasis on diversifying, and whether the average

American considers the homogenous nature of the professional and educational credentials of the current court a cause for concern. I believe that the survey will reveal that Presidents' have correctly deduced that the public both does not care to expand upon Harvard or Yale educated justices and believes that justices educated at those institutions are most qualified.

Coverage of the Educational Credentials of the Court in the Mainstream Media

Before examining the literature, I first argue that this problem is so severe, that even public rhetoric, which rarely cares about the Court, has recently criticized the current trend towards elitism on today's Supreme Court, many even going as far to say that it is in fact harming the court as an institution. "Despite the Court's increasing ethnic and gender diversity," says Dahlia Lithwick, an attorney turned journalist, "the cloistered Court does not include diversity of 'experience' ... the court as a whole has gotten too smart for our own good".⁵ Lithwick presents a novel idea, speaking about diversity of experience when usually diversity of demographics, that is race and gender, is what is considered when evaluating the quality of diversity within a political institution. Recently Justice Sonia Sotomayor spoke to the issues associated with the current composition of the court, saying "I, for one, do think there is a disadvantage from having five Catholics, three Jews, everyone from an Ivy League school... A different perspective can permit you to more fully understand the arguments that are before you and help you articulate your position in a way that everyone will understand."⁶ Sotomayor puts forth the argument that the Ivy League cultivates a similar perspective amongst its students. This problem, Sotomayor argues, goes past gender and race; all types of diversity must be strived for

⁵ <https://newrepublic.com/article/120173/2014-supreme-court-ivy-league-clan-disconnected-reality>

⁶ Rielly, Katie. "Justice Sotomayor Calls for More Supreme Court Diversity." *Time*. Time, 9 Apr. 2016. Web. 04 May 2016. <http://time.com/4287655/sonia-sotomayor-supreme-court-diversity/>

in our political system. Other scholars have similarly echoed Justice Sotomayor's sentiments. "No matter what their early upbringing, their most meaningful adult experiences, friendships, and acquaintances were likely acquitted during their Ivy League law days," posits John Farmer in his analysis of this issue.⁷ Justice Scalia noted that while similarity of thought would not be an issue if the Court was purely meant to make legal rulings, however it "also makes political decisions [so] it ought to be more representative of the population."⁸ Indeed, the Court the decided *Brown v. Board of Education*, arguably one of the most important Supreme Court decisions in U.S. history, had five members who had served in elected office. The current court has none.⁹ Lithwick argues that the current trend is dangerous, saying that "justices' perspectives are too often hindered by the fact that the pool of those with whom the unavoidably identify is so dangerously small and privileged...a Supreme Court built this way is going to have blind spots."¹⁰ In short, the justices serving on the Supreme Court have immense discretion when deciding cases, and these cases in turn have an immense effect on Americans everyday lives, at their most extreme defining fundamental rights one may or may not have; where a judge went to law school affects their decision making process. Ideally we want some variety in decision making processes surrounding these consequential decisions, otherwise the court will not be able to fully understand the ways in which their decisions will profoundly affect different portions of the population.

⁷John Farmer | The Star-Ledger, "Why the next Supreme Court Justice shouldn't be an Ivy League purebred | Farmer," NJ.com, April 02, 2016, , accessed April 24, 2017, http://www.nj.com/opinion/index.ssf/2016/04/supreme_court_pedigree_none_ivy_league_need_not_ap.html.

⁸ByJustinFox, "Save Us From the Ivy League Oligarchy," Bloomberg View, February 17, 2016, , accessed April 24, 2017, <https://origin-www.bloombergvew.com/articles/2016-02-17/save-us-from-the-ivy-league-oligarchy>.

⁹Dahlia Lithwick, "Yale, Harvard, Yale, Harvard, Yale, Harvard, Harvard, Harvard, Columbia," New Republic, November 13, 2014, , accessed April 24, 2017, <https://newrepublic.com/article/120173/2014-supreme-court-ivy-league-clan-disconnected-reality>.

¹⁰Dahlia Lithwick, "Yale, Harvard, Yale, Harvard, Yale, Harvard, Harvard, Harvard, Columbia,"

Not only is the homogenous decision making limiting the court but so is, many theorists argue, the actual admissions process of these uber-elite schools. Of this Schwartz says,

“Part of the problem with relying on university admissions officers to select our meritocracy is that the admissions process, especially at the undergraduate level, isn’t all that meritocratic.... Even an unbiased meritocratic selection system, though, selects for skills and behaviors that won’t necessarily turn out to be the most valuable ones later on. It beggars belief that a college or graduate school admissions officer really can reliably select the young people with the potential to accomplish the greatest things. People have different talents, and reveal them at different ages. This is a nation of reinventions and second chances. Maybe we ought to try harder to make our Supreme Court, and other institutions, reflect that.”¹¹

It is a shortcoming of the Court that every justice was educated at two elite institutions not only because of similar decision making processes but that it also presumes that the best can only be found in a predetermined locale. That is to say, there is a large body of potentially qualified candidates that are being excluded from the Court. Additionally, when Presidents solely select potential Supreme Court justices from this narrow pool of candidates it is inadvertently sending the message that one’s achievements in their mid-twenties is an indicator of whether or not they have the ability to sit on the highest court in the nation. It is problematic that the Court has not followed the suit of other political institutions in the country that have come to recognize that not only one type of person is fit to be a legislator or president.

Experts in the media argue that in the recent decades the political process, and particularly confirmation battles in the Senate, have become increasingly polarized.¹² Presidents are continually looking to make these confirmation battles more seamless. Thus, in light of this increased polarization, one explanation for the recent narrowing in educational background is that Harvard and Yale are often thought of as a way to automatically assume one’s intelligence.

¹¹ John Schwartz, "An Ivy-Covered Path to the Supreme Court," The New York Times, June 08, 2009, , accessed April 24, 2017, <http://www.nytimes.com/2009/06/09/us/politics/09ivy.html>.

¹² John Schwartz, "An Ivy-Covered Path to the Supreme Court"

“Perceptions of qualifications really matter in this game,” said Lee Epstein, a law professor at Northwestern who maintains a database of the justices’ characteristics, “in choosing an Ivy Leaguer a president might think: I don’t have to think too much. I don’t have to dig too deeply about whether they’re smart or not, whether they are well trained.”¹³ As the Supreme Court confirmation process has become increasingly polarized many presidents have looked to nominated someone who is not only qualified and aligned with their own views but also someone who they believe will be able to pass through a partisan Senate confirmation vote. “What we’re seeing is an abundance of caution. You can’t argue with Harvard,” says Niels B. Schaumann, vice dean of faculty at William Mitchell College of Law.¹⁴ Even more explicitly, argues Timothy P. O’Neill, a professor at the John Marshall Law School in Chicago, “An Ivy League diploma has become shorthand for: This person is objective and scientific, and will come to the single best decision unswayed by personal bias.”¹⁵ By choosing a nominee that went to either Harvard or Yale this almost guarantees the acceptance of one part of a nominee’s resume. NPR reporter Larry Abramson explains it well when he says, “the truth is, using top schools as a filter makes life simpler for busy presidents.”¹⁶ The public, as discussed in later sections, increasingly looks at the court through a partisan lens. Given the difficulty of passing a nominee through the Senate in an environment such as this, choosing an ivy league educated nominee puts the nominee on a path with the least resistance possible. I now turn to academic literature and my own research to investigate these claims.

¹³Ibid.

¹⁴ "The justice league: Elena Kagan's nomination shows that Ivy roots run deep," The Washington Post, May 12, 2010, , accessed April 24, 2017, <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/11/AR2010051104605.html?sid=ST2010050903614>.

¹⁵ "The justice league: Elena Kagan's nomination shows that Ivy roots run deep"

¹⁶ Larry Abramson, "The Harvard-Yalification Of The Supreme Court," NPR, May 16, 2010, , accessed April 24, 2017, <http://www.npr.org/templates/story/story.php?storyId=126802460>.

Previous Literature

I frame my research with the help of three separate veins of literature. First I explore research establishing the importance of diversity in both political institutions and the Supreme Court in particular. Next, I look specifically at the importance of educational diversity on the Court. Finally, I explore research done on the public's influence on the Supreme Court confirmation process and how members of the public evaluate Supreme Court nominees in general. I look to build upon this research with the results from my survey.

The Importance of Diversity and its Relevance to the Court

These sentiments are largely backed by scholarly research. Scholars have long held that establishing diversity is of the utmost importance in all areas of society but most especially our political institutions. Research shows that institutions comprised of individuals with diverse backgrounds and experiences enhances the quality of deliberations when decision making¹⁷ and increases the public's confidence in said institution¹⁸. These findings are particularly salient for a democracy such as the United States because citizen's faith in institutions provide the legitimacy necessary for political institutions in a democracy to function.¹⁹ Furthering this point, and particularly relevant to this paper is the research done by Michael Minta and Valeria Sinclair which examines the role of diversity in increasing government accountability and

¹⁷ Michael D. Minta and Valeria Sinclair-Chapman, "Diversity in Political Institutions and Congressional Responsiveness to Minority Interests," *Political Research Quarterly* 66, no. 1 (2013): , doi:10.1177/1065912911431245.

¹⁸ Michael D. Minta and Valeria Sinclair-Chapman, "Diversity in Political Institutions and Congressional Responsiveness to Minority Interests

¹⁹ Mandel Ngan, "A legitimacy crisis for our democracy - The Boston Globe," *BostonGlobe.com*, November 28, 2016, , accessed April 24, 2017, <https://www.bostonglobe.com/opinion/2016/11/28/legitimacy-crisis-for-our-democracy/Z8bVd99sFygmtAVMkWfeiO/story.html>.

responsiveness.²⁰ Their results showed that when comparing the more racially diverse U.S. House of Representatives to the less diverse U.S. Senate, the House is more responsive than the Senate to minority issues pertaining to race and class because of their enhanced “diversity infrastructure.”²¹ Further, they found that if the Senate were to increase their racial diversity it could make the Senate “equally if not more responsive to class-based issues than the House.”²² All this to say that establishing institutional diversity increases the effectiveness of said institution. Responsiveness to minorities is particularly important when considering the Supreme Court because the types of decisions the Court makes are often some of the most important governmental decisions for citizens and minorities especially.

In terms of decisions made on the Supreme Court regarding racial and gender minorities, those surrounding discrimination are often the most important. On this, Christina Boyd found in her research that

Informational theory argues that female and black judges bring a unique knowledge base and expertise to the bench in key areas such as traditional sex and race employment discrimination issues, respectively. This expertise and information is “credible and persuasive” and yields from a combination of their professional background and their distinctive group-influenced experiences and challenges that their modal male, white judge colleagues simply do not have.²³

This is all to say when making decisions that affect minorities, as the Supreme Court often does, it is imperative that there are justices that belong to these groups, and thus represent these groups, on the court. The decisions being made can only be completely informed if there is a justice there who has experienced what it means to be a part of the groups. In this vein I look to see if what is

²⁰ Michael D. Minta and Valeria Sinclair-Chapman, "Diversity in Political Institutions and Congressional Responsiveness to Minority Interests

²¹ Michael D. Minta and Valeria Sinclair-Chapman, "Diversity in Political Institutions and Congressional Responsiveness to Minority Interests

²² Ibid.

²³ Christina L. Boyd, "Representation on the Courts? The Effects of Trial Judges' Sex and Race," *SSRN Electronic Journal*: doi:10.2139/ssrn.2587325.

true of racial and gender minority groups is also true of the relative educational background minority currently present on the court based on the current occupants of the court. More specifically, although those who did not attend Harvard or Yale are not minorities amongst the general public these non-Harvard-Yale graduates can be thought of as such in context of the present court because it is completely dominated by Harvard-Yale graduates.

Can the same arguments be applied to non-Harvard-Yale graduates as other minorities relative to the court? That is, do Harvard and Yale graduates think about issues differently than others? Adam Chilton and Adam Bonica argue yes in their research, implying that lack of educational diversity on the court, not just racial and gender diversity, should also be of concern. They tested the ideologies of lawyers that attended a variety of law schools and found that all fourteen top law schools had distributions that leaned to the left, meaning that there are more liberal alumni than there are conservative alumni.²⁴ They argued that this means that “many of the elite law schools are far more liberal than law schools on average,”²⁵ suggesting similar ways of thinking among Harvard-Yale graduates. Further, law school faculties in general, but particularly at the leading fourteen law schools, tend to be “ideologically unrepresentative of the general population and tend to be identified with liberal causes and attitudes.”²⁶ Attendance at an elite law school was also associated with a tendency towards practical reasoning when thinking about the law rather than theoretical reasoning²⁷, meaning that those who attended elite law schools not only have the same tendency towards ideology but also similar approaches to legal reasoning. So, indeed, the prior arguments necessitating minority representation on the bench can be applied to

²⁴ Adam Bonica et al., "The Political Ideologies of Law Clerks and their Judges," *SSRN Electronic Journal*: , doi:10.2139/ssrn.2739478.

²⁵ Adam Bonica et al., "The Political Ideologies of Law Clerks and their Judges,"

²⁶ Ibid.

²⁷ Ibid.

diversifying the educational backgrounds of the bench. By comprising the bench solely of this group of Harvard and Yale graduates the court is thus comprised of a particular type of thinking about issues and the law as a whole.

How the Public Influences Supreme Court Nominations

Given the problematic nature of the current composition of the Court it is prudent to ask why it has come to be this way. A facet of this is the opinion of the public surrounding Supreme Court nominees. But just how important is public opinion on confirmation battles in the Senate? Research conducted by Jonathan Kastellec, Jeffrey Lax, and Justin Phillips for Columbia University specifically looks at the influence the public has on the Senate confirmation of Supreme Court Nominees. They ask the following question: “the decision to seat a justice is in the hands of the presidents and senators, but electoral incentives, particularly of the senators, can tie the Court back to the public. Given these incentives, does the public indeed play a key role in confirmation politics?”²⁸ The primary goal of any president making a Supreme Court nomination is to find someone who is both qualified (and aligns with their political goals) but also able to be confirmed by the Senate. If the public has substantial influence over Senate confirmations, as Kastellec, Lax, and Phillips looked to prove, then a sitting President has no choice but to consider what the Public “wants” in a justice. In fact, through their research they found that, “greater home state public support significantly and strikingly increased the probability that a senator will vote for confirmation, even controlling for the predictors of roll call voting...Public opinion, on average, matters more than any predictor other than the senator’s own ideological

²⁸ Kastellec, Jonathan P., Jeffrey R. Lax, and Justin H. Phillips. "Public Opinion and Senate Confirmation of Supreme Court Nominees." *The Journal of Politics* 72.3 (2010): 767-84. 18 July 2010. Web. 30 Apr. 2016. <http://www.columbia.edu/~jhp2121/publications/PublicOpinionAndJudicialNominees.pdf>

differences with the nominee.”²⁹ Through analyzing public support in different states, and comparing it to how different senators voted in multiple confirmation hearings, Kastellec, Lax, and Phillips were able to glean quite a significant fact: that there is a strong and systematic link between constituent opinion and voting on Supreme Court nominees. The implication of this research is that, essentially, the diversity that the public desires is the diversity that we see on the bench.

Further, James Gibson and Gregory Caldeira, looked to use to confirmation of Justice Samuel Alito to the Supreme Court in 2006 as a lens through which to view the public’s influence on Supreme Court politics. They found that, “a plausible explanation for the success of President Bush’s nomination is that the mass public was convinced [by the White House’s campaign as well as various interest groups] that Judge Alito was not too extreme or intemperate to sit on the High Court.”³⁰ That is, the public was won over by Justice Alito, and thus his confirmation was successful. Liberal interests groups, they say, spent \$1,365,857³¹ on ultimately ineffective advertising against Alito, indicating that the importance of public opinion for confirmations is widely known. However, both groups of researchers failed to look explicitly at how exactly members of the public form their opinions about who they believe should be on the Supreme Court. In fact, Gibson and Caldeira articulate that, “the view of how ordinary people form their preferences is highly speculative. We know precious little about how citizens evaluate

²⁹ Kastellec, Jonathan P., Jeffrey R. Lax, and Justin H. Phillips. "Public Opinion and Senate Confirmation of Supreme Court Nominees."

³⁰Gibson, James L., and Gregory A. Caldeira. "Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53.1 (2009): 139-55. 1 Jan. 2009. Web. 30 Apr. 2016. <http://www.ginareinhardt.com/wp-content/uploads/2012/01/Gibson-Confirmation-Politics-and-the-Legitimacy-of-the-US-Supreme-Court.pdf>

³¹ Gibson, James L., and Gregory A. Caldeira. "Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination."

Supreme Court nominees.”³² Thus the question turns to looking at how the public views and shifts opinions on Supreme Court nominees.

Framing and How the Public Evaluates Supreme Court Nominees

The most salient theory that relates public opinion to the Supreme Court confirmation process is a concept known as framing.³³ Of all the scholars, James Gibson and Gregory Caldeira best describe it in their research as “a process by which the salience or accessibility of different criteria or dimensions by which an event or case might be judged varies according to preexisting characteristics of the individual. A stimulus activates a frame, and the frame influences how the world is perceived and judged.”³⁴ They apply this to the court saying that the job of a successful nominee is to activate the legal rather than political frame through which ordinary citizens perceive and judge the confirmation process. Further, to the extent that legal qualifications are satisfied the influence of partisanship will be minimized.³⁵ As stated above, the increased partisanship of the court have pushed Presidents to attempt to frame a Supreme Court nominee in such a way. “Indeed,” says Maya Sen, “candidates are often presented to the public not on personal characteristics and professional experience— a strategy used by the supporters of Alito, Sonia Sotomayor, Garland, and others. For example, in presenting Judge Garland to the public in 2016, Barack Obama devoted the majority of his remarks to detailing Garland’s resume, including his Ivy league education and experience as a federal judge.”³⁶ Thus Barack Obama,

³² Gibson, James L., and Gregory A. Caldeira. "Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination."

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Maya Sen, "How Political Signals Affect Public Support for Judicial Nominations: Evidence from a Conjoint Experiment," *Harvard University*, November 6, 2016, , accessed April 24, 2017, http://scholar.harvard.edu/files/msen/files/conjoint-judicial_nominations.pdf.

facing a Republican and extremely partisan Senate, attempted to frame Garland solely in terms of his legal qualifications.

James Gimpel and Robin Wolpert, in contrast to the theory of legal framing, propose that this evaluation has much more to do with the nominating President than the actual candidate themselves. “The president,” they say, “serves as a cognitive link between the citizen...From the perspective of judicial selection, we find the strong connection between presidential evaluation and nominee evaluation to be quite informative.”³⁷ This suggests that the public, either based on lack of knowledge or lack of understanding, needs to look for additional ways to assess a Supreme Court and to do this they rely on their feelings of the sitting president. If it is in fact true that one’s feelings towards the nominating President dictate their feelings towards a candidate, then it would eliminate the importance of the candidate’s resume because if one supports a President they would likewise support any nominated candidate despite that candidate’s professional and educational resumes.

I point to the attempted nomination of Harriet Miers to the Bench, in which even those who were aligned with the President opposed her nomination. The influence of education on the confirmation process was fully showcased when President Bush nominated Harriet Miers to the bench in 2005. Miers, while a lawyer who had worked in the Bush White House, attended Southern Methodist University for law school rather than Harvard or Yale. While the confirmation process focused on her ideology, many also chose to focus on her education to bring her nomination into question. “The Supreme Court is an elite insituon,” wrote Washington Post columnist Charles Krauthammer, whilst calling for her withdrawal, “It is not one of the

³⁷ James G. Gimpel and Robin M. Wolpert, "Opinion-Holding and Public Attitudes toward Controversial Supreme Court Nominees," *Political Research Quarterly* 49, no. 1 (1996): , doi:10.2307/449047.

‘popular’ branches of government.”³⁸ Mr. Krauthammer was both one of Miers staunchest critics and a supporter of President Bush, thus contrasting Gimpel and Wolpert’s findings. Ultimately, Ms. Miers withdrew her candidacy before the Senate was able to hold hearings. Of the process President Bush commentated, “it seemed to me that there was another argument against Harriet, one that went largely unspoken: How could I name someone who did not run in elite legal circles? Harriet had not gone to an Ivy League law school...As one conservative critic put it, ‘Harriet Miers isn’t qualified to play a Supreme Court Justice on The West Wing, let alone a real one.’”³⁹ The lesson to be gleaned from this confirmation battle is clear; resume has a very real effect on one’s chances in the Senate. Additionally, if a nominee does not fit a preferred mold, even supporters of a president will oppose that nominee.

While Gimpel and Wolpert conducted research prior to the Miers nomination, and thus did not consider it, Maya Sen looks at public sentiment 11 years after. However, even given the Miers confirmation battle, Sen confirms Gimpel and Wolperts findings. In reference to how the public views elite credentials in Supreme Court nominees, she looked specifically to see if either of these factors could outweigh partisanship in the evaluation of a potential Supreme Court justice. She finds that, “respondents also have lukewarm responses to educational achievement particularly for the support question; so long as the candidate does not graduate outside of the Top 100 schools, then respondents are statistically indifferent about law school rank.” Further, she claims that while “Americans do rely on pedigree and experience, particularly in assessing candidate qualifications...beyond a baseline level of competence, partisanship is the main

³⁸ "Charles Krauthammer - Withdraw This Nominee," The Washington Post, October 07, 2005, , accessed April 24, 2017, <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/06/AR2005100601468.html>.

³⁹ "Bush book: Ivy League elitists doomed Harriet Miers | Politics," Dallas News, November 09, 2010, , accessed April 24, 2017, <http://www.dallasnews.com/news/politics/2010/11/09/bush-ivy-league-elitists-doomed>.

predictor of support of, and trust in, a potential candidate.”⁴⁰ This is all to say that if the party one identifies with nominates someone to the Supreme Court, one will be likely to endorse them. However, while her findings seem to trivialize the Miers confirmation, I argue that her questioning was too wide to yield significant results. By this I mean that it is not any top 100 or top 50 law school that is in question. Many do not know where a specific law school ranks but they will know a school such as Harvard or Yale by name and thus the feelings they associate with these schools. That is to say, it is the pedigree elicited by the name recognition of Harvard and Yale and not the factual rank of the law schools that may sway a member of the public’s evaluation of a Supreme Court nominee. Thus the point is to discern whether Harvard or Yale specifically have an effect on the public when evaluating a Supreme Court nominee rather than the broad group falling under those who have attended any top 50 law school; I expand upon this in this paper.

Methodology

This research is based on an online survey that took place in late-January 2017, with a total of about 950 responses. The distribution method for the survey was Amazon’s Mechanical Turk service (MTurk). The effectiveness of using the sample pool, as well as the slight biases, presented by this service is well established. Marc Dupuis , Barbara Endicott-Popovsky and Robert Crossler of The University of Washington, describe MTurk participants as “generally younger than the population they are meant to represent, although their age is generally more representative than what may often be found in university subject pools.”⁴¹ Further, they say that

⁴⁰ Maya Sen, "How Political Signals Affect Public Support for Judicial Nominations: Evidence from a Conjoint Experiment"

⁴¹Kevin Crowston, "Amazon Mechanical Turk: A Research Tool for Organizations and Information Systems Scholars," *Shaping the Future of ICT Research. Methods and Approaches IFIP Advances in Information and Communication Technology*, 2012, , doi:10.1007/978-3-642-35142-6_14.

these participants “are generally comparable to other populations often recruited for research...beyond age and gender, MTurk participants also represent a diverse range of income levels.”⁴² MTurk provides a good pool of participants from diverse income backgrounds. The most significant bias of the sample population comes from the sample being a younger population, which to be expected given the medium the survey is presented on and not out of line with a population from a survey conducted in person on a college campus. Even given this bias, Michael Buhrmester, Tracy Kwang, and Samuel D. Gosling of the University of Austin Texas find that, “the site has the necessary elements to successfully complete a research project from start to finish. Our analyses of demographic characteristics suggest that MTurk participants are at least as diverse and more representative of non-college populations than those of typical Internet and traditional samples. Most important, we found that the quality of data provided by MTurk met or exceeded the psychometric standards associated with published research.”⁴³ In essence, the benefits of MTurk outweigh the biases that the medium presents. Though the population may be skewed young, it will be diverse enough to provide significant results for a research project.

They survey was conducted over the course of 24 hours, the short time frame due to the survey’s proximity to President Trump’s announcement of his nomination of Neil Gorsuch to the Supreme Court. In order to prevent bias, it was critical to release the survey before President Trump announced his nomination, otherwise the public may have either been influenced by the media coverage or have been thinking about the Supreme Court more than usual. The population

⁴²Kevin Crowston, "Amazon Mechanical Turk: A Research Tool for Organizations and Information Systems Scholars,"

⁴³ Buhrmester Michael, Kwang Tracy, and Gosling Samuel D. " Amazon’s Mechanical Turk: A New Source of Inexpensive, Yet High-Quality, Data?"- Feb 03, 2011. Accessed April 24, 2017. <http://journals.sagepub.com/doi/pdf/10.1177/1745691610393980>.

for this survey were all American citizens who are over 18 years of age, or in other words, the voting population who would realistically be able to influence the Senators decisions about Supreme Court nominations and thus the population of people whose opinion matters to this paper. The survey consists of three main types of questions that will be analyzed separately. The three types of questions were blocked, with the three blocks having a set order. However, within the blocks the question order was randomized and in each question the order of responses that one could choose was also randomized

The first type can be described as “straight forward” questions; these include questions such as those requiring the respondents to rank questions on an agree-disagree scale, questions which ask the respondents to respond either yes or no, and questions which ask the respondents to rank issues from most to least important. When evaluating these questions, it is fairly simple to see whether the public does or does not care about an issue which will address the main points of my argument. The next category consists of two “list-experiments.” The structure of a list experiment is that one random half of the respondents are given one set of statements and asked how many they agree with. This can be thought of as the control group and is used to establish the baseline of what the average population would agree to out of the statements. The next random half, which can be thought of as the treatment group, is given the same set of statements with an additional statement added at the end which is what we truly want to study. Because we know the average baseline of agreement, if the average of the treatment group goes up then we can deduce that the respondents are in general agreement with the added statement. The list experiment is an important way to evaluate if respondents may agree with a statement that they may not say they agree with if asked outright due to social pressure. This is of especial importance in this study because many may not want to outright say that they prefer an ivy-

league educated justice over one who is not. The list experiment is an attempt to subversively get at these thoughts. The final category of questions is a profile experiment in which each respondent is randomly presented with a profile of a potential Supreme Court nominee and asked the degree to which they would endorse them should they be nominated. When comparing the responses to each profile, each of which has different tradeoffs, I hope to discern which traits are and are not important to the public when evaluating different nominees.

Straight-Forward Questions

The two questions that these questions address are, is the public aware of the limited scope of the educational backgrounds on the court currently and does the public think that diversity of this nature is important? In order to assess whether there is knowledge or concern surrounding the issue, respondents were asked to answer how many current members of the U.S. Supreme Court attended either Yale or Harvard. Respondents were then informed of the correct number and asked whether this concerned them. To look at the issue of diversity, specifically educational or professional diversity, respondents were asked if they felt diversity was important in our political institutions and then to rank the legislative, judicial, and executive branches in order of importance of diversity. The purpose of these questions were to assess whether the public generally thinks about the issue of diversity on the court. Respondents were asked to rank how well they thought a hypothetical court of all ivy-educated justices could perform as well as one made up of all non-ivy educated justice, which was an upfront way of finding out if the public is more inclined towards an ivy-educated court. Finally, the respondents were asked to rank a series of statements on a five-point scale from strongly disagree to strongly agree. For

most of these questions the dependent variable was a respondent's degree of agreement while the independent variable was a statement about our political system or institutions.

List Experiments

The primary purpose of the list experiments is to persuade the respondents to reveal inclinations or thoughts they may not reveal if asked point blank, due to social pressures of what may be the more "correct" response. Specifically, in an attempt to eliminate this potential bias, I ask respondents only to list the number of statements they agree with rather than specifying which one's they agree with. The control group for each list experiment has five statements while the treatment group has six. If the mean is clearly higher for the treatment group, which would be when the mean of the treatment group is statistically significantly higher than the control group, logically the statement that would have caused this increase is the added statement. Thus the list experiment will allow us to deduce whether or not the public agrees with a potentially sensitive statement. In the first list experiment the treatment statement is "A justice who went to a law school such as Harvard or Yale is better prepared to serve on the Supreme Court than a justice who went to law school elsewhere." In the second list experiment the treatment statement is "A President should take into consideration the current demographics on the Court (i.e. race, gender, etc.) when picking a new Supreme Court nominee." In order to analyze this experiment, I compare the averages of agreed statements between the control and treatment group through a two sample t-test (difference of means.) The two sample t-test with assess whether there is a statistically significant difference in the means of agreed statements between the control and treatment groups. The null hypothesis being that there is no difference in the means and thus the added statements are not agreed to.

Profile Experiment

In the last section of the survey, respondents are randomly assigned one of three profiles under one of two treatment groups and asked to rank how strongly they would endorse that candidate for the Supreme Court if nominated. As with the list experiments, this section of the survey is designed to subtly make the respondent reveal how they might feel about this issue without asking them outright in a way that they may feel uncomfortable responding truthfully to. The six randomly presented profiles are as follows:

1. A white male, previously served as a judge. 55 years old. Non practicing catholic. Wrote for the law review at his law school. Seems to agree with you on most issues.
2. A white male, previously served as a judge. 55 years old. Non practicing catholic. Wrote for the law review at his law school. Went to Harvard Law School. Seems to agree with you on most issues.
3. A white male, previously served as a judge. 55 years old. Non practicing catholic. Wrote for the law review at his law school. Went to University of Pennsylvania Law School. Seems to agree with you on most issues.
4. A white male, previously served as a judge. 55 years old. Non practicing catholic. Wrote for the law review at his law school. Seems to disagree with you on most issues.
5. A white male, previously served as a judge. 55 years old. Non practicing catholic. Wrote for the law review at his law school. Went to Harvard Law School. Seems to disagree with you on most issues.
6. A white male, previously served as a judge. 55 years old. Non practicing catholic. Wrote for the law review at his law school. Went to University of Pennsylvania Law School. Seems to disagree with you on most issues.

The treatment groups that the profiles fell under were that the justice agreed with you on most issues or disagreed with you on most issues. It is important to have each profile under both

treatment groups because often ideology impacts how one evaluates a potential Supreme Court nominee. Under each treatment group there were three profiles, identical except for one did not identify which law school the candidate attended, one specified Harvard, and one specified University of Pennsylvania. The reasoning behind choosing these specific options for the profiles is two-fold. First, I want to assess whether the knowledge of where a candidate attended law school at all has any impact and that can be done by comparing the profile with no law school mentioned to the ones that do mention it. Then, University of Pennsylvania was chosen to compliment Harvard because it is an elite, and well known, law school, however it is not one of the two law schools represented on the Court. The goal is to try to evaluate if the mean scoring of each profile is different within their respective treatment groups and if there are trends that exist in both treatment groups. As with the list experiments, each profile would be compared using a two sample t test with the null hypothesis being that there is no difference in means.

Thus, there are three hypotheses that ultimately weave together to inform the central argument of this paper; Presidents continue to draw Supreme Court nominees from the narrow pool of Harvard and Yale graduates because the Public, which ultimately informs Senators choices, view a Harvard or Yale law degree as code for superior intelligence and so picking from this pool is the best way to frame a Supreme Court candidate in such a polarized era. The survey is structured so that each block of questions investigates one hypothesis. The first hypothesis, investigated by the straight forwarded questions, is that the public will value gender and racial diversity over educational and professional diversity. In addition, I propose that this first section of the survey will reveal that the Public is more aware of and concerned about diversity in the legislative and executive branches and thus does not consider diversity of the judicial branch as regularly. The list experiments work against the hypothesis that the mean difference between the

two lists will be different, specifically that the mean of the longer list will be higher. Finally, the profile experiments also work to prove the hypothesis that the mean scores between the profiles will be different and that knowledge of what law school a potential Supreme Court nominee went to will alter their mean rating.

Data and Analysis

The sample is fairly representative of the population. 52% of respondents were male and 48% female. The most represented racial groups were White/Caucasian with 84%, African American/ Black with 7%, and Asian with 6%. This closely mirrors the United States Census statistics of 77% White, 14% Black, and 6% Asian, although this sample is more heavily white populated⁴⁴. 40% responded that they considered themselves Democrats, 26% Republicans, and 31% Independents⁴⁵. When choosing the method of distribution for the survey, one of the expected tradeoffs was a heavier than normal percentage of the population identifying as Democrats because of the survey being online. Nevertheless, the overall survey is not particularly biased in terms of demographics and thus can be used to make predictions about the wider American population.

In order to create a general picture of the knowledge level of the sample, the survey first asks several questions surrounding the composition of the Supreme Court and politics in general. In general, survey respondents claimed to regularly follow politics and news about politics, with over 55% saying that they paid attention either a great deal or a lot of the time. Additionally, they proved to be knowledgeable about the Supreme Court, particularly important given the nature of the questions the survey addresses, with over 80% of respondents correctly knowing the term

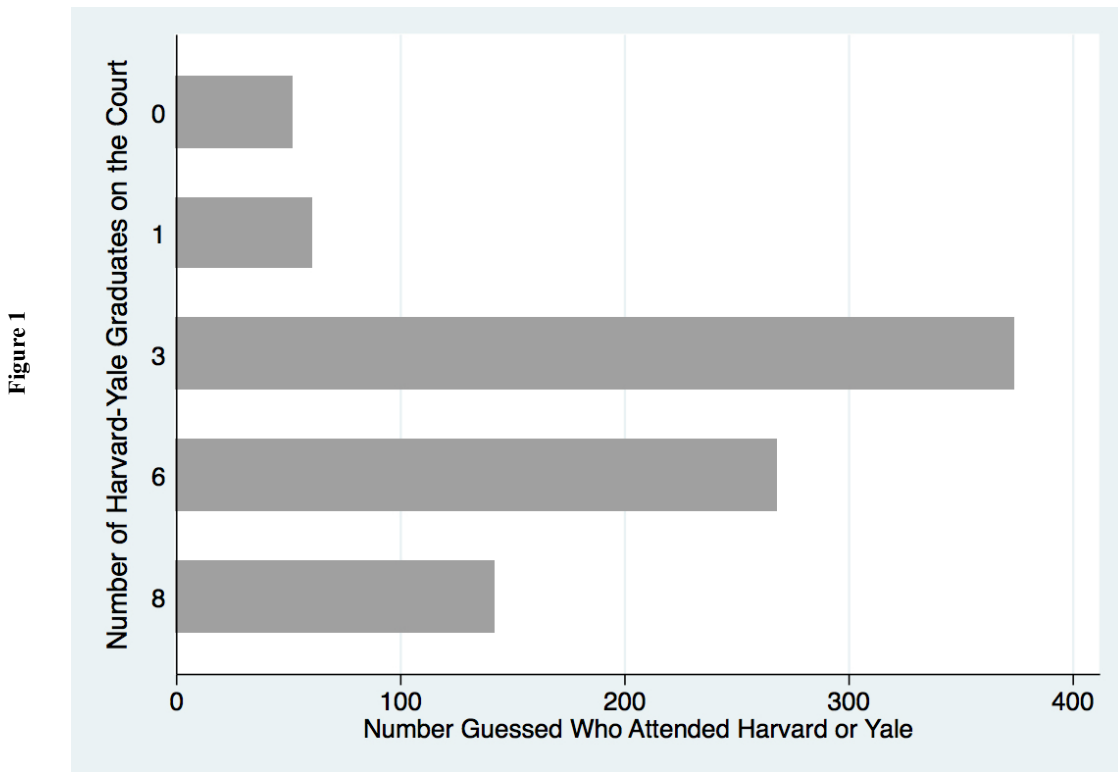
⁴⁴ <https://www.census.gov/quickfacts/table/PST045216/00>

⁴⁵ numbers rounded in order to make even

limits and methods for being chosen to sit on the Supreme Court. These statistics are useful in gaging the significance of later responses because they indicate that the questions are understood and thus the answers are well thought out, rather than the respondents taking a shot in the dark on a subject they know little about

Straightforward Questions

In order to effectively look at whether the public is currently concerned with the current composition of the court in respect to the justices educational and professional backgrounds, the first question addressed in this section is what the knowledge level of the educational and

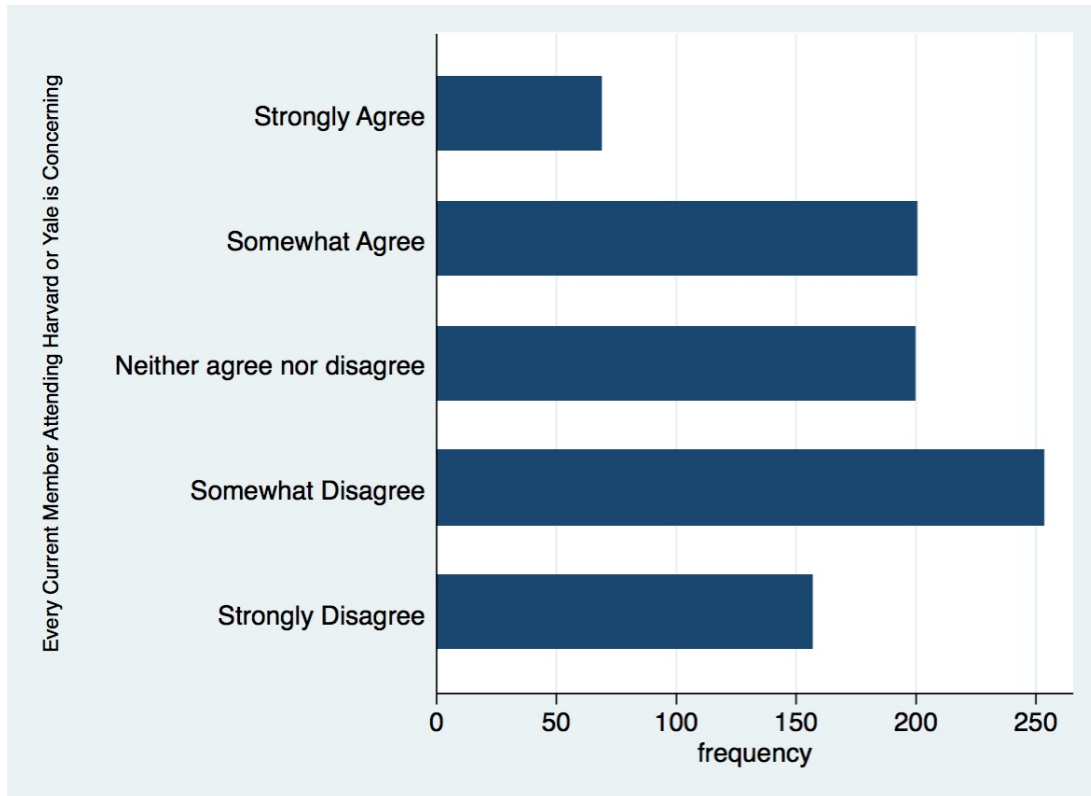


professional resumes of the court is currently. Respondents were asked “do you know how many current members of the U.S. Supreme Court attended either Harvard or Yale Law School?” and then given the option to respond with either 0, 1, 3, 6, or all 8. The responses are reflected in figure 1. Over 40% of respondents answered just three justices, with the next highest response

being six, and less than 20% responding correctly with all eight. These results strongly back my hypothesis that there is little to no knowledge of the reality of the educational resumes of the court or the issues associated with it amongst the general public. If the ivy dominated court was a highly publicized issue that many in the public were in turn concerned with remedying, then one could assume a large percentage, or at least a majority of respondents, would correctly choose eight justices in response to this question. Further, on a subtler level these results serve to show that the potential of the severely limited scope of the educational resumes of the justices is not an issue that, even when pressed, seems to be an implausible because so few answered the question correctly. These results additionally further the point that there has not been widespread public concern about the narrowing in this area of the court because there is little knowledge of it. That is to say, how can the public take issue with something they are not aware of?

To answer the hypothetical of if the public would be concerned about the recent trend towards Harvard-Yale educated justices if the knowledge was there, respondents were asked to rank their level of agreement with the following statement: “The fact that every current member of the Supreme Court has attended Harvard or Yale for law school concerns me.” The results are presented in figure 1. There are two significant facts present in this data. The first is that less than a majority, 31%, responded that they either strongly agreed or somewhat agreed with this statement. From this it can be understood that educational homogeneity on the court, although proved problematic by scholars for a variety of reasons, is not something that the public finds to be concerning. A much higher percentage of respondents, in contrast, responded they somewhat or strongly disagreed with this statement. There is not an overwhelming agreement with this statement, and many respondents feel adversely to the suggestion that the current composition of

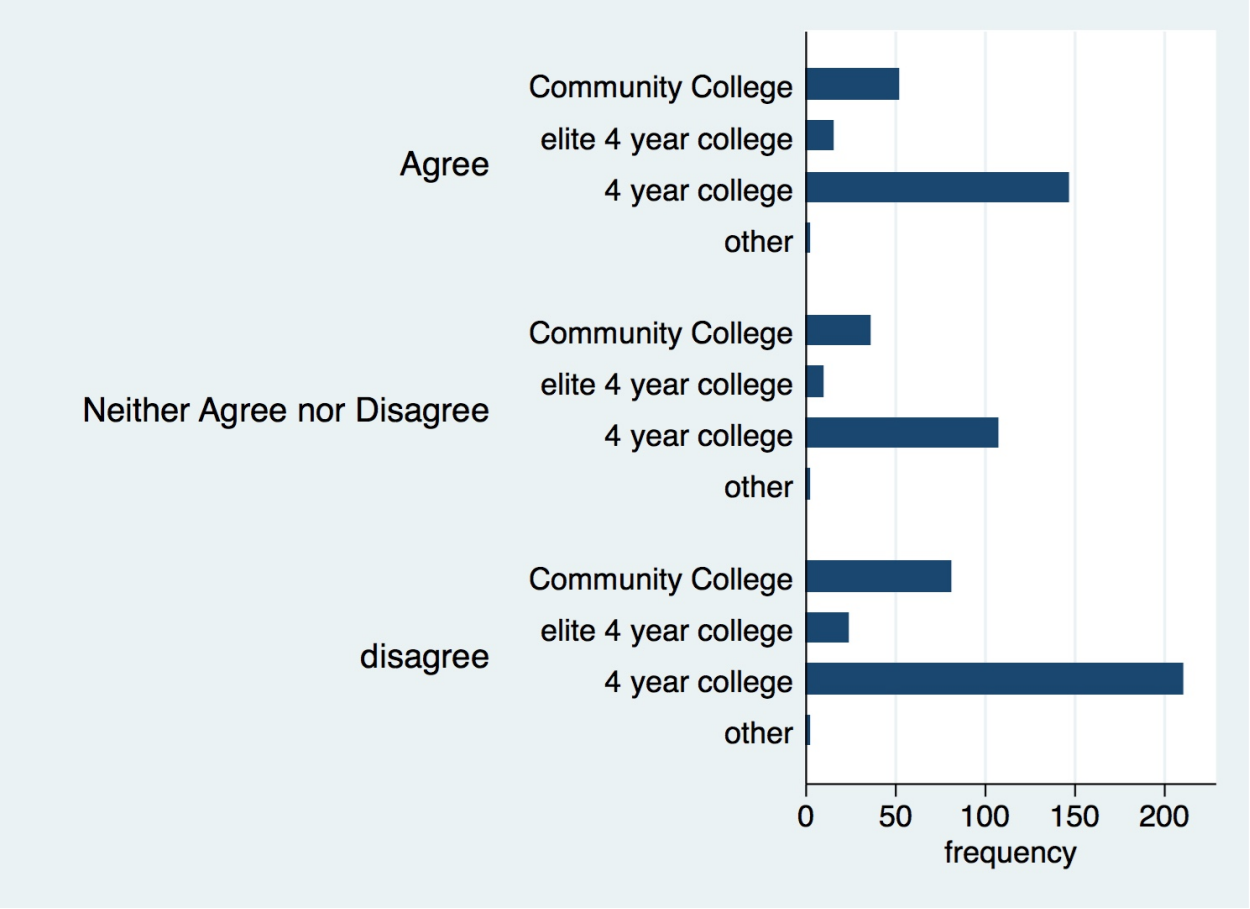
Figure 2



the court may be problematic. This question does not explicitly ask respondents if a Harvard or Yale justice is preferable to one who is not. However, I suggest that this adverse reaction implies that the general public does believe it is better for Harvard and Yale justices to be present on the court. That is to say, if one were to be neutral in response to this question it suggests an ambivalence towards Harvard or Yale; there are not strong feelings towards this issue in general. I take this to mean that the respondent understands the issue and why it could be problematic, but in the end does not feel strongly about the issue and this is why the educational backgrounds on the court do not concern them. Thus, for one to indicate that they do in fact disagree with this statement, it means they do have strong feelings towards the issue, those strong feelings being the disagreement with the statement. If one strongly disagrees with the statement the it must mean they agree with the opposite of the statement and its connotations, which in this case would be the opposite of concern. That is to say, to disagree with this statement is to agree that it is a

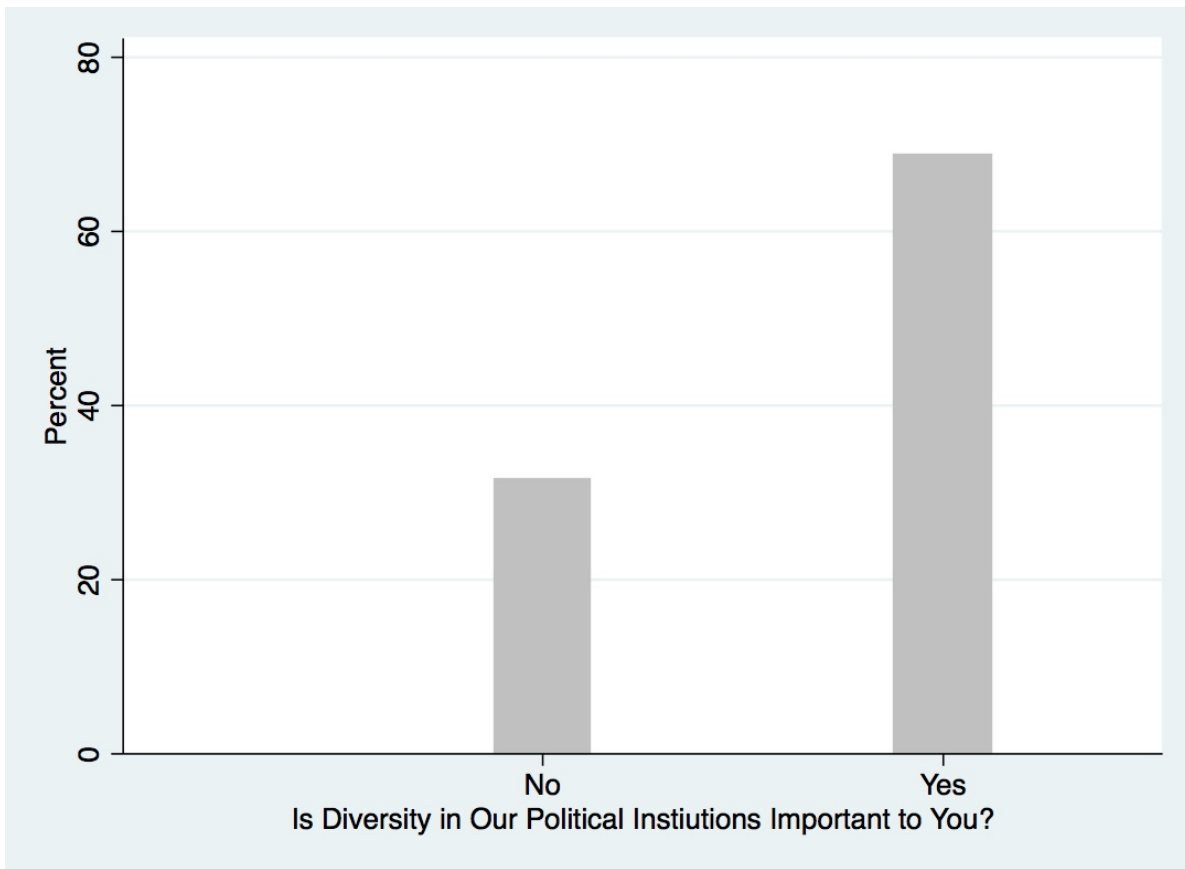
good thing that all the justices are educated at Harvard and Yale; thus, a preference for Harvard or Yale educated justices is implied. I additionally control for education level when looking at

Figure 3



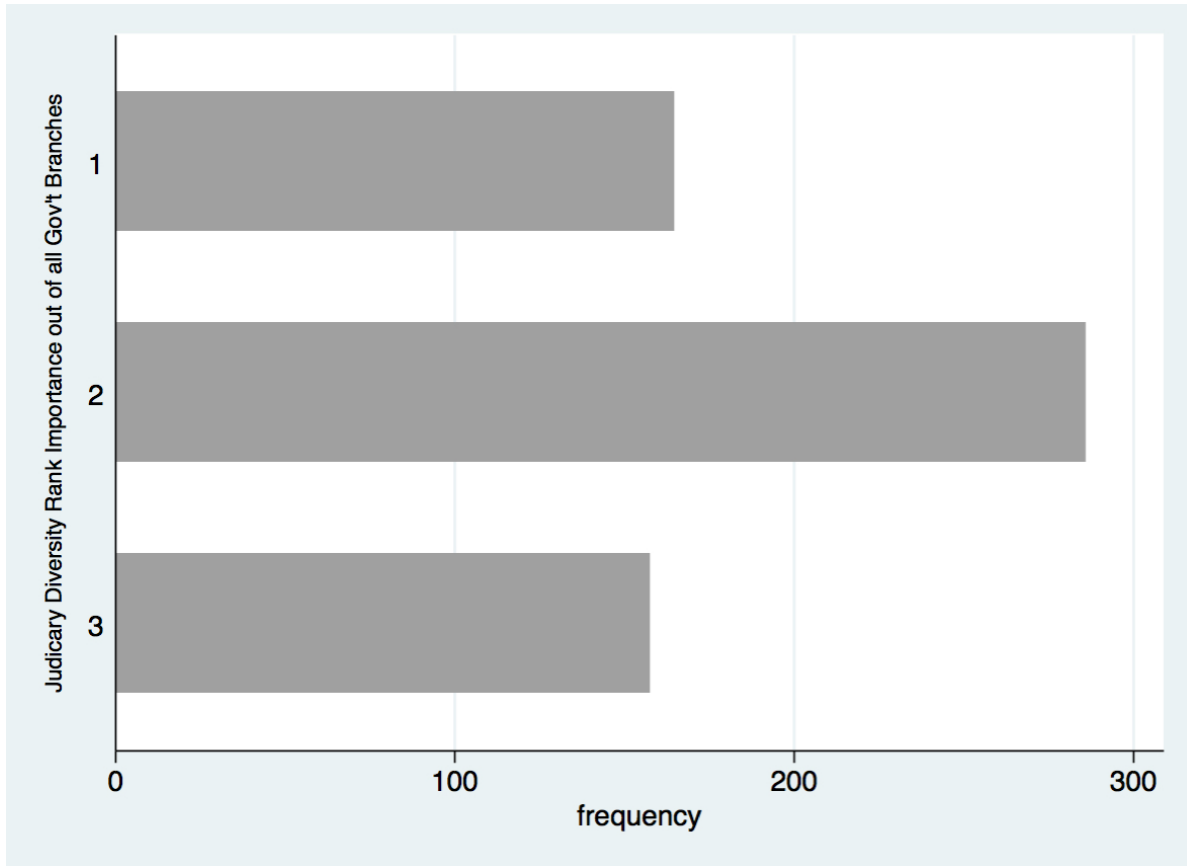
the responses to this question. The results are presented in figure 3. Amongst those that disagree with the statement, and as I argue above imply a preference for Harvard and Yale educated justices, a majority were educated at either a four- year college or elite four-year college. It makes sense that those educated at four year universities would probably have a preference for justices seen as elite over those who did not, because they are less likely to see these justices as different from themselves. However, a surprising “class” divide in thinking about this issue is introduced. This divide in thinking is explored further later in this analysis.

Figure 4



Given these findings, the next question to be addressed is how the public feels about diversity as a whole in both our political institutions as a whole and the Supreme Court. That is, even though there is a lack of knowledge and concern about the educational backgrounds of the current court, is diversity still desirable in general? In order to talk about whether the public cares about education and professional diversity a baseline of whether the public cares about diversity in general, of which the answer is assumed to be yes, and what types of diversity the public cares about needs to be established. The survey firsts asks the respondents, “People often talk about the diversity (race, gender, religion etc.) of the people who serve in our political institutions. Is having diversity in such institutions important to you? Unsurprisingly, as shown in figure 4, a vast majority of respondents said that that having diversity of some kind is either somewhat or extremely important to them. I felt it important to then force the respondents to make a hard choice between political institutions, in the hopes understanding just how important

Figure 5



the public feels attaining a diverse judiciary branch is. Thus, survey takers were directed to answer the following “In which of the three branches of government do you think diversity is most important? In which is it least important? Please rank the branches from 1 to 3 where "1" indicates the branch in which you most prioritize diversity. Type your ranks into the boxes using each rank (1-3) EXACTLY ONCE.” Figure 3 breaks down the frequency at which the judiciary branch, which was defined as Federally appointed judges in the survey, was chosen at each position of importance. The highest percentage rank was second, with 47% ranking it as such. This is behind the legislative branch, defined as the House of Representatives and the Senate, which 51% ranked as being the branch in which they most prioritize diversity. The Judiciary was not overwhelmingly, then, least prioritized. The current trend towards narrowing of resumes of the court is therefore even more surprising. It is imperative to ask, given these results. what the

public is referring to and thinking about when a desire for increased diversity on the court, and all political institutions, is expressed.

In order to address this issue, respondents were asked to “pick up to two types of diversity that are most important to have on” both the Supreme Court and across all political institutions. The results are displayed in table 1.

Table 1

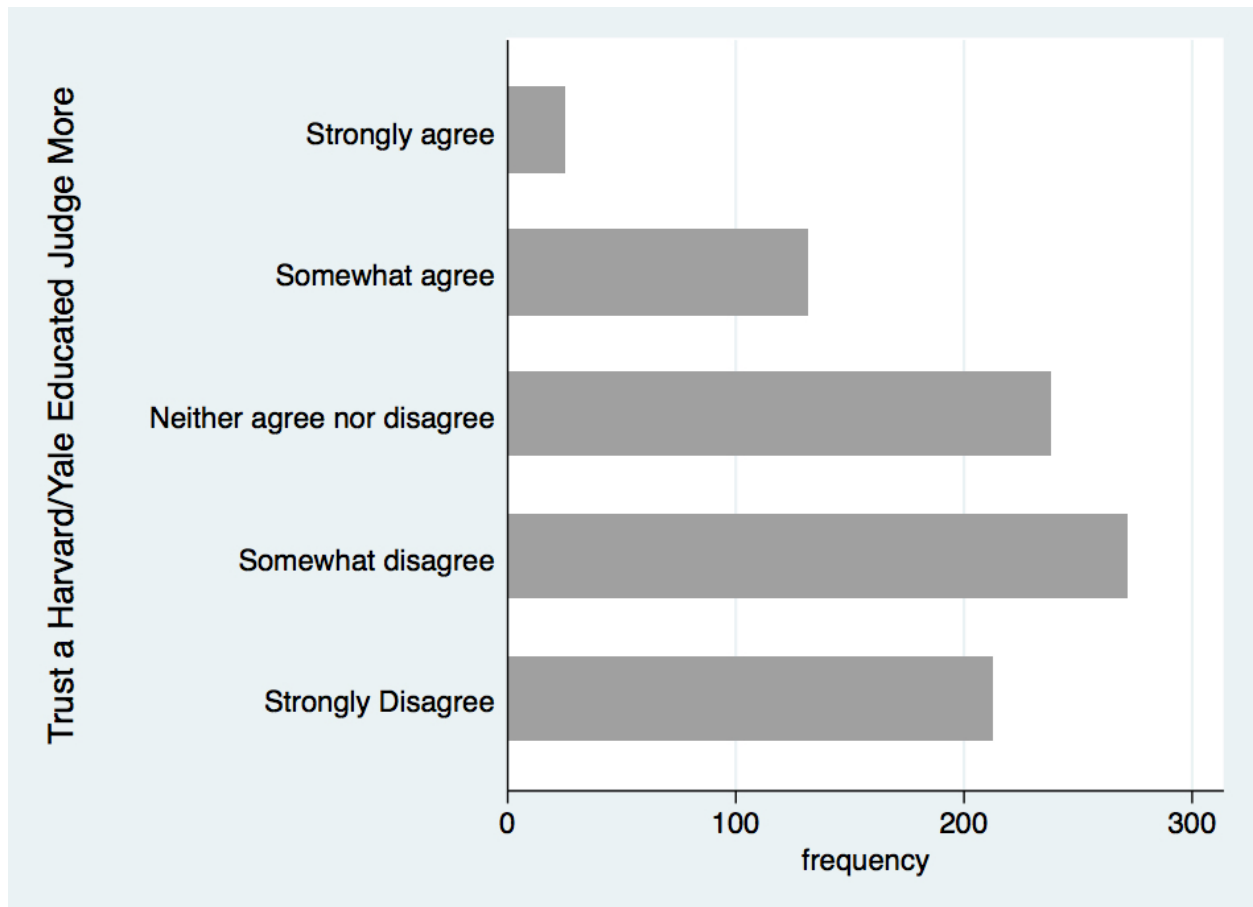
#	Diversity on Supreme Court	Count
1	Diversity of Gender	495
2	Diversity of Race	461
3	Professional Diversity (different prior careers)	107
4	Educational Diversity (variety of undergraduate and graduate schools)	86
5	Diversity of Religion	81
6	Diversity of Age	110
7	Economic/wealth Diversity (justices come from different economic backgrounds)	214
8	I don't worry about these issues on the Court	102
9	Other	14
	Total	881

With respect to the Supreme Court, diversity of gender and race were the most often prioritized with 56% and 52% of respondents respectively choosing to include them as one of the most important types of diversity to have on the Supreme Court. Educational diversity was included as one of the two most important types of diversity to have on the Supreme Court by 10% of respondents and professional diversity was chosen by 12%. The numbers were similar when considering all political institutions with 48% of respondents including diversity of gender in their choices and 49% including race. Educational diversity was included by 8% of respondents

and professional diversity by 18%. These numbers clearly indicate that when considering diversity needed on the Supreme Court diversity of gender and race are the most thought about. Below 10% of respondents consider educational diversity to be an important type of diversity to achieve on the Supreme Court. This is consistent with the lack general knowledge that survey respondents demonstrated to have about this issue on the court. These numbers are also consistent with the hypothesis that the general public is most concerned with diversity of race and gender, not educational or professional.

The respondents were then asked directly about different traits that a potential Supreme Court justice may have. They were asked to degree they agreed with the statement “I trust a justice who went to a law school such as Harvard or Yale, more than a justice who attended other law schools.”

Figure 6



The results are presented in table 6. 18% of respondents agreed with the statement to some degree. However, it is useful to combine the agree statements with the neither agree nor disagree statements because, ideally, if one truly did not agree with the statement they would choose to disagree in some sense. It seems that to choose to be neutral in this statement is to really agree with the statement, because while one does not fully agree that a Harvard or Yale judge can be trusted more, one does not full disagree either. I argue that one would know if they disagreed in some sense with a statement and would probably more comfortable stating that disagreement than agreement due to social pressures and biases. In respect to a candidates' professional resume, respondents were asked to what degree they agreed with the statement "It is important that a Supreme Court Justice has prior judicial experience (e.g. on the Court of Appeals) before joining the Court." Although the trend of sitting Supreme Court justices having prior judicial experience has been proven to be a relatively recent one, over 80% of respondents indicated some degree of agreement with the statement. It is thus mostly conclusive that the general public either does not want or does not care about increasing the professional diversity amongst Supreme Court justices. This in contrast to the feelings surrounding educational diversity which still require further, and more nuanced, investigation.

List Experiments

The survey presented respondents with two versions of a list experiment. In the first experiment the added statement to the list the treatment group received was "A justice who went to a law school such as Harvard or Yale is better prepared to serve on the Supreme Court than a justice who went to law school elsewhere." In order to examine if there was a significant

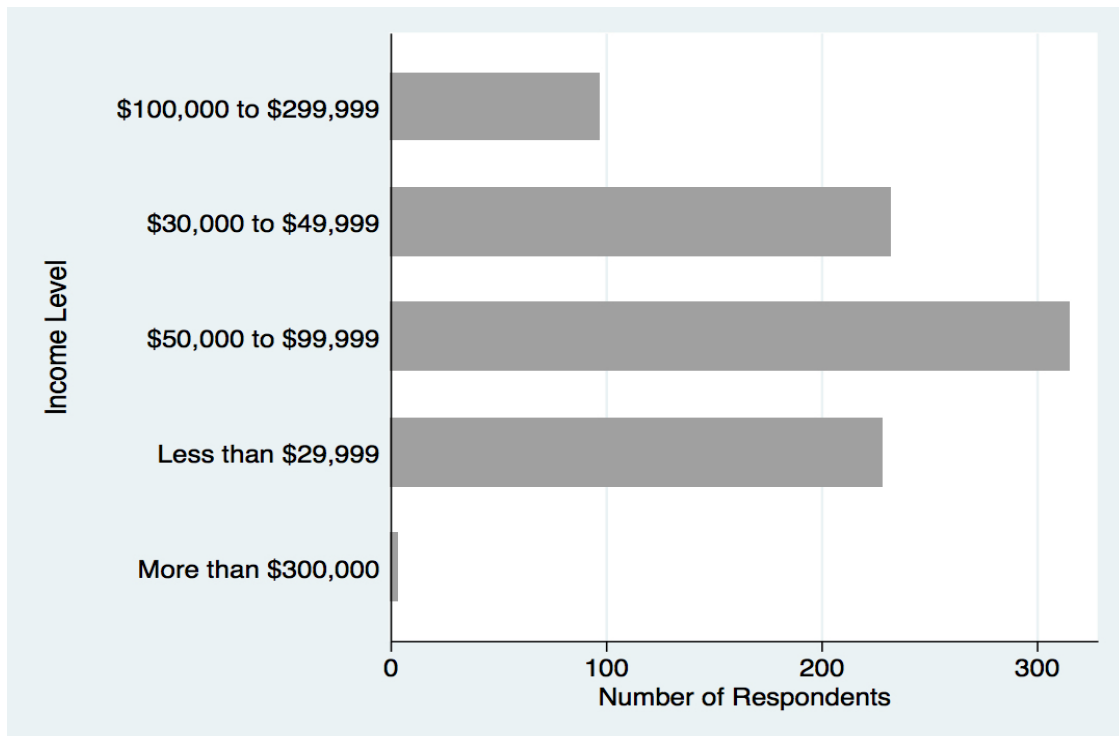
increase in number of agreed statements when the treatment statement was added I ran a difference of means test with $H_0: \mu_1 = \mu_2$ and $H_a: \mu_1 < \mu_2$ where μ_1 is the mean number of statements agreed to on the control list with only 5 statements and μ_2 is the mean number of statements agreed to on the treatment group with 6 statements. For the first list experiment, the null hypothesis being rejected that would mean that the general public does in fact agree with the statement that a Harvard or Yale educated justice is better prepared to serve on the Supreme Court than one who did not. The results are presented in table 2.

Table 2

Difference in Means for List 1	Coef.	Std. Err.	t	P>t	[95% Conf.	Interval
(1)	.0987449	.0576966	1.71	0.088	-.0146614	.2121511

At face value these results are not significant and thus point to the fact that, overall, the respondents did not agree with the notion that a Harvard or Yale justice is better prepared for the Supreme Court than one who is not. However, it is more revealing to control for certain factors

Figure 8



and then look at the results through those lens'. Controlling for gender, race, and party identification did not yield significant results. However, the results were significant when controlling for income level. These results can be found in both figure eight and table three, four, and five. Figure eight presents the raw breakdown of where the survey respondents fall in income level, with the majority making between \$50,000-\$90,000 a year. Because so few respondents fall in the 300,000 plus category, for the sake of analysis I combined those respondents with the 100,000-200,000 category. The mean of each list, when controlled for income level, are presented in tables three and four.

Table 3

list1_a	Mean	Std. Err.	95% Conf.	Interval
\$100,000+	2.136364	.1884366	1.766052	2.506676
\$50,000-\$99,999	2.226994	.0849594	2.060033	2.393954
\$30,000-\$49,999	2.075758	.1035017	1.872358	2.279157
Less than \$29,999	2	.1014169	1.800698	2.199302

Table 4

list1_b	Mean	Std. Err.	95% Conf.	Interval
\$100,00+	2.54386	.1503342	2.248357	2.839363
\$50,000-\$99,999	2.236842	.0968918	2.046388	2.427297
\$30,00-\$49,99	2.14	.1154875	1.912993	2.367007
Less than \$29,999	2.063063	.113235	1.840484	2.285642

The difference of means test at the \$100,000+ level yielded the only significant result, these are presented in table five.

Table 5

List 1, \$100,000+ income bracket	Mean Coef.	t	P>t	95% Conf.	Interval
	(1) .4075056	2.71	0.007	.1120025	.7030088

Thus, with a p-value much lower than 0.05, it can be concluded that those with incomes exceeding \$100,000 agree with the tested statement and believe that a Harvard or Yale educated judge is better prepared to serve on the Supreme Court. This, compared with the divide in thinking previously found between those that attended a four-year college and those that did not, is exemplary of the current class divide in the United States. These findings provide evidence that those who are in an upper class have more confidence in justices educated at elite institutions than those who are not.

The second list experiment tested the statement “A President should take into consideration the current demographics on the Court (i.e. race, gender, etc.) when picking a new Supreme Court nominee.” In this case the null hypothesis being rejected would indicate that the general public agrees that the President should attempt to expand the current demographics of the court when looking to choose a nominee for the Supreme Court. The results are presented in table six. The P-value is either equal to or extremely close to 0 so we can, in this case, reject the null hypothesis at a significance level of .05.

Table 6

Mean Difference for List 2	Coef.	Std. Err.	t	P>t	95% Conf.	Interval
(1)	.3683637	.0538307	6.84	0.000	.2625683	.474159

Thus, we are certain that 95 out of 100 times the true difference between the means of the treatment group and control group will fall between .263 and .474 with the treatment group having the higher mean. That means, in this case, the general public agrees with the treatment. Given the prior evidence collected surrounding the public’s desire for diversity this is not a surprising result. However, it does serve to illustrate an interesting dichotomy between the literal definition of diversity and what the public seems to consider it as. Though the respondents indicate a desire for consideration of the demographics of the court in these results, in prior results there is a significant lack of concern surrounding the Harvard and Yale graduates dominance of the current court. Further, in prior questions the respondents overwhelmingly prioritized diversity of gender and race on the court and that is confirmed by this result. Thus I conclude that the public want to see the court diversified, but mostly in the key areas of gender and race.

Profile Experiments

There are three category of comparisons that need to be looked at together to gain information from the profile experiments. The profiles with different law school designations need to be compared against each other underneath the designations of agreeing with the respondent on most issues and disagreeing with the respondents on most issues. Finally, the degree of

difference in profiles under each designation of agreement of disagreement will be compared to see if knowledge of a candidate’s law school has a greater influence on one’s rating of a Supreme Court nominee. In order to compare different profiles against each other I will run three difference of means tests under each level of agreement. In order to calculate the mean of each profile I assigned a numerical value to each degree of endorsement so that 1=strongly endorse, 2=endorse, 3=oppose, and 4= strongly oppose. Thus a candidate with a lower mean score is more highly preferred and a candidate with a higher mean score is more highly opposed. For each difference of means test ran the hypothesis statement is $H_0: \mu_1 = \mu_2$ and $H_a: \mu_1 \neq \mu_2$.

Under the category of “agrees with you on most issues,” the first difference of means test I ran had μ_1 = the mean endorsement score of the candidate where no law school is designated and μ_2 = the mean endorsement score of the candidate where the law school designated is Harvard. The results are presented in table 7. The P-value is greater than .1 so I cannot reject the null hypothesis at a significance level of .1 or .05. Thus, it can be concluded that knowing a candidate

Table 7

Mean	Coef.	Std. Err.	T	P>t	95% Conf.	Interval
(1)	.0482088	.0469496	1.03	0.306	-.0445853	.1410029

went to Harvard does not have a greater influence on endorsement than not knowing where a candidate went to law school.

The second difference of means test I ran had μ_1 = the mean endorsement score of the candidate where no law school is designate and μ_2 = the mean endorsement score of the

candidate where the law school designated is University of Pennsylvania. The results are presented in table 8.

Table 8

Mean	Coef.	Std. Err.	t	P>t	[95% Conf.	Interval]
(1)	.096154	.0493182	1.95	0.053	-.0013888	.1936968

The P-value is only slightly larger than a significance level of .05, however 0 is included in the 95% confidence interval of probable differences in mean endorsement score so I cannot reject the null hypothesis. However, this does not mean that no relationship exists. While I cannot definitely say at 95% confidence that a candidate with University of Pennsylvania specified was on average ranked higher than when no law school was specified, I can say it with 90% confidence. Thus there is more room for error, but still the relationship exists. Thus I can say with 90% confidence that knowing a candidate went to law school at the University of Pennsylvania makes one more likely to endorse said nominee when they agree with you on most issues.

Finally, the last difference of means test that I ran under the the category of “agrees with you on most issues” μ_1 = the mean endorsement score of the candidate where the law school designated is and μ_2 = the mean endorsement score of the candidate where the law school designated is University of Pennsylvania. The results are presented in table 9.

Table 9

Mean	Coef.	Std. Err.	t	P>t	95% Conf.	Interval
(1)	.047945	.0493182	0.97	0.333	-.0495978	.1454878

The P-value is greater than .1 so we cannot reject the null hypothesis at a significance level of .1 or .05. Thus, it can be concluded that knowing a candidate went to Harvard Law does not have a greater influence on endorsement than knowing a candidate attended the University of Pennsylvania for law school. Thus, in all cases not including comparing no law school to the University of Pennsylvania, the public has indicated that when a potential Supreme Court candidate agrees one's views they are likely to endorse them, no matter where they went to law school.

Under the category of “disagrees with you on most issues” I ran the same mean comparisons tests in the same order. The results of comparing the mean endorsement scores where no law school was designated and Harvard law was designated are presented in table 10, the results of the mean endorsement score comparison between no law school designation and University of Pennsylvania designation are presented in table 11, and the results comparing the mean endorsement score between when Harvard and University of Pennsylvania are designated are presented in table 12.

Table 10

Mean	Coef.	Std. Err.	t	P>t	[95% Conf.	Interval
(1)	.02	.0467943	0.43	0.670	-.0724662	.1124662

Table 11

Mean	Coef.	Std. Err.	t	P>t	[95% Conf.	Interval
(1)	-.0902778	.0598765	-1.51	0.134	-.2086352	.0280797

Table 12

Mean	Coef.	Std. Err.	t	P>t	[95% Conf.	Interval
(1)	.110278	.0467943	2.36	0.020	.0178118	.2027442

The only significant comparison is between the mean endorsement scores where μ_2 = the mean endorsement score of the candidate where Upenn is designated as the law school and μ_1 = the mean endorsement score of the candidate where the law school designated is Harvard. The p-value is less than a significance value of .05 and thus we can reject the null. In this case the test was evaluating the equation $\mu_1 - \mu_2$. The confidence interval includes only positive numbers which indicates that the mean endorsement score of a candidate who went to Harvard Law is statistically significantly higher than the mean endorsement score of a candidate who went to University of Pennsylvania law.

The only profile comparison that is significant is that between candidates who attended UPenn Law and Harvard Law, and disagree with the respondents on most issues. There is, unfortunately, not much that can be gleaned from the five statistically insignificant profile comparisons. When comparing a known law education to an unknown law education, both when the candidate agreed or disagreed with the respondent, knowing a candidate's educational resume did not have an effect on their endorsement score. However, because there was only a difference between two candidates with known law schools it can be inferred that a candidate's education or professional resume begins to have more of an impact on a candidate's endorsement score when the candidate does not agree with the respondent.

Discussion

Do these results indicate that the public think that diversity is an important quality to establish on the Supreme Court? Can the recent severe narrowing in the educational and professional resumes of the court be explained by public preference for Harvard and Yale? The answer is somewhat mixed. From the survey the somewhat puzzling fact that the public is just as

concerned with diversifying the legislative and judicial branches is introduced. Additionally, when asked what areas are of most concern to diversify on the court, and in general all political institutions, gender and racial diversity, predictably, are overwhelming indicated. This result can be tied with the expressed desire for a President to think about the current demographics on the court when nominating a new justice. It seems that there is a real concern that the President makes an informed decision when nominating someone to the Bench that factors in the current demographics on the court, but the only demographics that the public wants to be considered are race and gender. This confirms the earlier hypothesis that the reason gender and racial diversity has increased in recent decades on the court is because the public wants it. It also raises questions about what the public thinks of as the true definition of diversity. From these results I would argue that many only think of diversity in terms of race and gender.

Further, the analysis of the data suggests that there seems to be contradictory views when thinking about the Supreme Court. For all the desire towards diversifying the gender and racial makeup of the court there is an equivalent apathy towards diversifying the educational and professional resumes of the Bench. In respect to the educational background of a potential justice, from this survey there is not enough information to definitively say that the public prefers judges that attended Harvard or Yale serve on the Supreme Court. Through the results generated by the first list experiment, a class divide on thinking about these issues shines through. It is clear that those who fall in the yearly income bracket exceeding \$100,000 believe that Harvard and Yale educated justices are better for the court than ones who are not. These results are compounded with the divide in thinking between those that attended four year universities and those that did not when expressing concern about the current composition of the court. This is extremely relevant because it confirms, in some sense, the current anti-elitist trends

in the country recently amongst those in the middle class and poorest tax brackets. It is almost an indictment of the elite class and trend towards elitism in the government that there is such a clear break in opinion between these class brackets. It is also striking that there exists such a clear divide, highlighting the difference in thinking between those that exist at different wealth levels.

There are additionally important facts that can be taken away to start to form a clear picture of how the public views this issue. Additionally, it is possible to create a sort of general outline for what the public looks for in a Supreme Court justice. First, it is necessary to acknowledge there clearly is little knowledge of this narrowing of resumes on the court. The public has almost no awareness that all current justices on the court attended Harvard or Yale. In tandem with Kestel, Lax, and Phillips's findings, this implies that it will be difficult to begin to correct the problem without first educating the public on the existence of the problem. This lack of knowledge informs their lack of concern for educational diversity within the Supreme Court. However, even when presented with this knowledge, many do not take issue with it, some even saying that they would place more trust in a Harvard or Yale educated justice. There is emphasis put on justices having prior judicial experience suggesting that there would not be significant support for a candidate who had a separate career. Though not overwhelming, there is evidence that suggests that all these characteristics have more influence when evaluating a justice that does not share one's same beliefs. This is consistent with prior research conducted on how the public evaluates Supreme Court nominees.

The public claims to be concerned with diversifying the highest court in the nation. However, what is truly meant by these claims is that there is a desire for a racial diverse and gender-equal court rather than diversifying areas that may not be discussed as frequently in regards to diversity. In fact, it seems that the public equates the term diversity and what it means

to be sufficiently diverse with gender and racial diversity. There is no knowledge of the limited nature of the Supreme Court, but there is no guarantee that if there were to be knowledge that this would change the public's view of the situation.

Conclusion and Implications

The contributions of this analysis are twofold. First, this analysis brings to attention both the issues associated with the narrow educational and professional resumes present on the court and the need for further education of the public on this issue. There are numerous scholars who cite the problematic nature of having only Harvard or Yale educated justices on the court, as well as the issues associated with having justices with identical professional backgrounds. Further, this is an issue that has superseded scholarly research and is cited regularly in mainstream media. For, what is most likely, the least covered branch in the media this is a significant finding. The issues discussed include a lack of a difference of thoughts when discussing legal decisions. When considering decisions that will affect the livelihoods of all Americans it would be beneficial to have multiple perspectives from which to look at it.

Secondly, this analysis further aids our understanding of how the public evaluates diversity on the Supreme Court and how the public evaluate the educational credentials of a potential Supreme Court nominee. The results of this survey point to the conclusion that the public is most concerned with establishing racial diversity and a gender balance on the Supreme Court rather than a balance of educational or professional resumes. Further, one's law school education seems to be most important when the potential nominee does not agree with the respondent on most issues. Another area in which law school education is important to respondents is for those in the upper class. Indeed, this analysis exposes a class divide in thinking

about elite educated Supreme Court justices. This is an area in which further research can and should be done. Perhaps the most interesting point brought up by this analysis, there would be a benefit to exploring further whether candidates that are perceived to be elite are supported more strongly by those in the upper class. Additionally, further research may be needed to fully understand how Americans think about what it even means to be diverse as this analysis suggests that although there are many characteristics, age, religious, etc. in which a body of people can be diverse respondents seem to only think of diversity in terms of gender and race.

In conclusion, while it is clear that Presidents are choosing Supreme Court nominees from an ever-narrowing pool of Harvard and Yale graduates, it is not clear that their efforts do in fact make the Senate confirmation process easier. It is logical that in such partisan times a President would want to frame his or her Supreme Court nominee in solely legal terms however it is not conclusive that the American public, who have such an influence on the confirmation process, actually approve of Harvard and Yale graduates more than graduates of law schools elsewhere. Thus, it seems that over the past decades increased partisanship has served to not only infiltrate the legislative and executive branches but also weaken the judicial branch through the influence of partisanship on the President's nominees to the Supreme Court. Thus the one faction of American government supposedly insular to the effects of partisanship, the Judiciary, is no longer.

Bibliography

- Abramson, Larry. "The Harvard-Yalification Of The Supreme Court." NPR. May 16,2010. Accessed April 24, 2017. <http://www.npr.org/templates/story/story.php?storyId=126802460>.
- Bialik, Kristen. "What backgrounds do U.S. Supreme Court justices have?" Pew Research Center. March 20, 2017. Accessed April 24, 2017. <http://www.pewresearch.org/fact-tank/2017/03/20/what-backgrounds-do-u-s-supreme-court-justices-have/>.
- Bonica, Adam, Adam S. Chilton, Jacob Goldin, Kyle Rozema, and Maya Sen. "The Political Ideologies of Law Clerks and their Judges." SSRN Electronic Journal. doi:10.2139/ssrn.2739478.
- Boyd, Christina L. "Representation on the Courts? The Effects of Trial Judges' Sex and Race." SSRN Electronic Journal. doi:10.2139/ssrn.2587325.
- Buhrmester Michael, Kwang Tracy, and Gosling Samuel D. " Amazon's Mechanical Turk: A New Source of Inexpensive, Yet High-Quality, Data?"- Feb 03, 2011. Accessed April 24, 2017. <http://journals.sagepub.com/doi/pdf/10.1177/1745691610393980>.
- "Bush book: Ivy League elitists doomed Harriet Miers | Politics." Dallas News. November 09, 2010. Accessed April 24, 2017. <http://www.dallasnews.com/news/politics/2010/11/09/bush-ivy-league-elitists-doome>.
- "Charles Krauthammer - Withdraw This Nominee." The Washington Post. October 07, 2005. Accessed April 24, 2017. <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/06/AR2005100601468.html>.
- Crowston, Kevin. "Amazon Mechanical Turk: A Research Tool for Organizations and Information Systems Scholars." Shaping the Future of ICT Research. Methods and Approaches IFIP Advances in Information and Communication Technology, 2012, 210-21. doi:10.1007/978-3-642-35142-6_14.
- Fox, Justin. "Save Us From the Ivy League Oligarchy." Bloomberg View. February 17, 2016. Accessed April 24, 2017. <https://origin-www.bloombergview.com/articles/2016-02-17/save-us-from-the-ivy-league-oligarchy>.

- Gibson, James L., and Gregory A. Caldeira. "Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53.1 (2009): 139-55. 1 Jan. 2009. Web. 30 Apr. 2016.<http://www.ginareinhardt.com/wp-content/uploads/2012/01/Gibson-Confirmation-Politics-and-the-Legitimacy-of-the-US-Supreme-Court.pdf>
- Gimpel, James G., and Robin M. Wolpert. "Opinion-Holding and Public Attitudes toward Controversial Supreme Court Nominees." *Political Research Quarterly* 49, no. 1 (1996): 163. doi:10.2307/449047.
- Kastellec, Jonathan P., Jeffrey R. Lax, and Justin H. Phillips. "Public Opinion and Senate Confirmation of Supreme Court Nominees." *The Journal of Politics* 72.3 (2010): 767-84. 18 July 2010. Web. 30 Apr. 2016. <http://www.columbia.edu/~jhp2121/publications/PublicOpinionAndJudicialNominees.pdf>
- Liptak, Adam. "Sonia Sotomayor and Elena Kagan Muse Over a Cookie-Cutter Supreme Court." *The New York Times*. September 05, 2016. Accessed April 24, 2017. <https://www.nytimes.com/2016/09/06/us/politics/sotomayor-kagan-supreme-court.html>.
- Lithwick, Dahlia. "Yale, Harvard, Yale, Harvard, Yale, Harvard, Harvard, Harvard, Columbia." *New Republic*. November 13, 2014. Accessed April 24, 2017. <https://newrepublic.com/article/120173/2014-supreme-court-ivy-league-clan-disconnected-reality>.
- Minta, Michael D., and Valeria Sinclair-Chapman. "Diversity in Political Institutions and Congressional Responsiveness to Minority Interests." *Political Research Quarterly* 66, no. 1 (2013): 127-40. doi:10.1177/1065912911431245.
- Ngan, Mandel. "A legitimacy crisis for our democracy - The Boston Globe." *BostonGlobe.com*. November 28, 2016. Accessed April 24, 2017. <https://www.bostonglobe.com/opinion/2016/11/28/legitimacy-crisis-for-our-democracy/Z8bVd99sFygmtAVMkWfeiO/story.html>.
- Rampell, Catherine. "Yale, Harvard Law Taking Over Supreme Court." *The New York Times*. July 16, 2010. Accessed April 24, 2017. https://economix.blogs.nytimes.com/2010/07/16/yale-harvard-law-taking-over-supreme-court/?_r=0.

Schwartz, John. "An Ivy-Covered Path to the Supreme Court." The New York Times. June 08, 2009. Accessed April 24, 2017. <http://www.nytimes.com/2009/06/09/us/politics/09ivy.html>.

Sen, Maya. "How Political Signals Affect Public Support for Judicial Nominations: Evidence from a Conjoint Experiment." Harvard University, November 6, 2016, 1-33. Accessed April 24, 2017. http://scholar.harvard.edu/files/msen/files/conjoint-judicial_nominations.pdf.

Star-Ledger, John Farmer | The. "Why the next Supreme Court Justice shouldn't be an Ivy League purebred | Farmer." NJ.com. April 02, 2016. Accessed April 24, 2017. http://www.nj.com/opinion/index.ssf/2016/04/supreme_court_pedigree_none_ivy_league_need_not_ap.html.

Schwartz, John. "An Ivy-Covered Path to the Supreme Court." The New York Times. The New York Times, 08 June 2009. Web. 04 May 2016. <http://www.nytimes.com/2009/06/09/us/politics/09ivy.html>

"The justice league: Elena Kagan's nomination shows that Ivy roots run deep." The Washington Post. May 12, 2010. Accessed April 24, 2017. <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/11/AR2010051104605.html?sid=ST2010050903614>.