# Do Americans Understand the Judicial Philosophies They Endorse? Evidence from Mass and Elite Surveys

Miles T. Armaly
University of Mississippi
mtarmaly@olemiss.edu

Christopher N. Krewson
Brigham Young University
chris_krewson@byu.edu

Elizabeth A. Lane
North Carolina State University
elizabeth_lane@ncsu.edu

***Abstract***

Although members of the mass public express support for judicial philosophies, such as originalism, and evaluate nominees and decisions accordingly, it remains unclear whether they apply these philosophies in a coherent and consistent manner. In general, the public rarely employs overarching belief systems when making political judgments. Thus, are individuals philosophically constrained in their thinking about the judiciary? To answer this, we assess philosophical constraint among the mass public and compare it to a relevant baseline: legal professionals. Using two surveys—the 2022 Cooperative Election Study (CES) and a 2025 Prolific sample of legal professionals—we evaluate constraint through multiple metrics, including attitude consistency. Our findings suggest that judicial philosophy functions as an organizing framework for only a small subset of individuals, primarily those with higher levels of political sophistication or legal training. There is a disconnect between philosophy-based support and coherence in one's understanding of that philosophy.

**Keywords**: judicial philosophy; mass opinion; sophistication; constraint

**Word count**: 9,988

In legal circles, the media, and everyday politics, much is made of the interpretations of legal text that federal court judges use—or purport to use—when reaching decisions on cases. The most commonly discussed interpretations can broadly be described as originalism (most closely associated with conservative jurists) and a living constitutional theory (associated with liberals), with each categorization having various off-shoots (e.g., textualism, pragmatism).[1] President Trump vowed to choose a "qualified originalist," "who's judicial philosophy is one that believes in separation of powers, co-equal branches of government" (Hannity 2018). And in each of his three nominations he emphasized his nominees' philosophy as a qualification that made them worthy to serve in such a powerful position. For example, he lauded Neil Gorsuch's "commitment to interpreting the Constitution according to its text" (Archives 2017), and he described Brett Kavanaugh as a "proven textual originalist" (Ellis 2018; Politico 2018). Similarly, while Obama was on the campaign trail in 2008, he touted that he would choose judges that "believe in fidelity to the text of the Constitution, but they also think you have to look at what is going on around you and not just ignore real life" (Lee 2012).

Discussion of judicial philosophy is a significant part of the highly salient and televised Supreme Court confirmation hearings held by the Senate Judiciary Committee. It became a prominent topic of discussion during the infamous hearings of Robert Bork (Walsh and Kamen 1987) and remained prominent ever since (Collins Jr, Ringhand and Boyd 2023; Comiskey 1993; Guliuzza, Reagan and Barrett 1994; Krewson and Owens 2022; Ringhand and Collins 2010). In fact, questions related to judicial philosophy comprise 10-20% of all hearing comments (Ringhand and Collins 2010, 618). In 2022, Senator Chuck Grassley used his opening statement to warn Judge Jackson that he will ask tough questions about her judicial philosophy. He expressed that, "Some of us believe that judges are supposed to interpret the law as it was understood when written, not make new law... Others believe

[1]See: A Conversation on the Constitution with Justices Stephen Breyer and Antonin Scalia: Judicial Interpretation

that courts should make policy. They believe in a so-called living constitution. They think that the Constitution's text and structure don't limit what judges can do, [and that only the former is correct]" (Grassley 2021).

These philosophies are abstract and complex, so much so that Justice Antonin Scalia called "the difficulty of applying [philosophy] correctly" its "greatest defect" (1988). Still, scholarship shows that members of the American mass public possess preferences about the interpretations that judges use (e.g., Greene, Persily and Ansolabehere 2011), and evaluate nominees, judges, and decisions through this lens (Krewson and Owens 2021, 2022; Rivero and Stone 2023). For instance, there is a compounding effect of using a disfavored philosophy to reach a disliked outcome. Importantly, these preferences are *not* driven exclusively by partisan or ideological rhetoric (Krewson and Owens 2022). What remains unclear regarding Americans' preference for judicial philosophy is what those preferences represent, where they emanate from, and whether they are sufficiently complex to mirror the philosophical preferences of "legal elites."

In this paper, we pursue two goals. First, we assess the extent to which individuals have a meaningful understanding of judicial philosophies—that is, beyond merely recognizing labels—and whether they can independently identify outcomes that align with those philosophies. More specifically, we examine whether the public's preferences regarding judicial interpretation are constrained: whether they reflect a cohesive belief system that gives rise to, organizes, and connects domain-specific attitudes. We ask whether judicial philosophy functions as a "crowning posture" or "capping abstraction" (Converse 1964), providing structure to individuals' views on legal and judicial issues.

Second, we argue that answering our central question requires identifying an appropriate baseline for comparison. It is of limited value to conclude that the mass public does not apply judicial philosophy if legal professionals do not apply it either. Much of the existing research linking mass attitudes about courts, the law, and judicial philosophy relies on survey items measuring self-reported support for originalism or living constitutionalism. While

this work does not *explicitly* claim that individuals possess a well-defined understanding of judicial philosophy, it often rests on the implicit assumption that people meaningfully prefer outcomes associated with particular interpretive approaches. We believe this assumption merits direct examination. Such an investigation would be incomplete however, without also assessing how well those those "in the know"—those with legal expertise—meet the same standard.

In studies of political attitudes more broadly, researchers often assess constraint in the mass public by comparing it to either a normative ideal (e.g., Converse 1964) or to elite samples (e.g., Lupton, Myers and Thornton 2015). We adopt the latter strategy, as it provides a more concrete benchmark. Accordingly, to evaluate philosophical constraint in the mass public, we also measure it among legal professionals, whom we expect to exhibit more structured and coherent views about the law.

Our examination is motivated, in part, by the lack of attitudinal constraint we observe in other political contexts (Converse 1964; Lupton, Myers and Thornton 2015), the low levels of sophistication and knowledge among the American mass public (Delli Carpini and Keeter 1996; Luskin 1987), and the possession of an inconsistent understanding of the Constitution (Armaly and Enders 2023). At the level of legal elites, we might expect judicial philosophy to represent a constrained set of beliefs which ought to be applied consistently across issues and contexts. Indeed, Justice Scalia spoke of judicial philosophy offering "consistency and predictability...a coherent approach" to the law (Scalia 1988). Although scholars highlight that many evaluate legal stimuli with judicial philosophy in mind, it is important to determine whether the masses actually possess a judicial philosophy, or simply have a general familiarity with the *language* of, say, originalism. In the parlance of Ellis and Stimson (2012), can the masses link the content of philosophy to other attitudes in concrete ways (a la "operational" ideology), or can they only link *labels* to definitions (a la "symbolic" ideology)? Is mass philosophy operational or symbolic? Furthermore, how do the masses fare relative to legal professionals?

These literatures illustrate the need to scrutinize public attitudes carefully, especially when the formation of those attitudes is assumed to be consistent and when they appear to explain meaningful variation in the evaluation of elites and political activity. We see three broad possibilities regarding constraint in the realm of judicial philosophy. Individuals' attitudes on court and legal matters may be:

1. Constrained as a function of judicial philosophy.
2. Constrained as a function of some other orientation or political predisposition, such as ideology.
3. Unconstrained, or constrained by a different, presently unidentified force (e.g., see Uscinski et al. 2021 and Lane 1962).

Given the extensive scholarship on constraint (Lupton, Myers and Thornton 2015), attitude formation (Zaller and Feldman 1992), and (un)certainty with respect to legal matters (Armaly and Enders 2023), we are inclined to believe the third option is the likeliest when it comes to the masses. Inasmuch as political sophistication predicts constraint in other realms (e.g., Federico and Schneider 2007), we suspect legal professionals—who, by the nature of their training, are sophisticated in legal matters—will exhibit more constrained attitudes than the masses. Conversely, the masses will appear to show significantly less constraint because judicial philosophy will not act as an organizing force.

We use data from the 2022 Cooperative Elections Survey to measure mass attitudes (N = 1,000) and a 2025 Prolific sample to measures attitudes of legal professionals (N = 483). Following Federico and Schneider (2007) and Lupton, Myers and Thornton (2017), we construct multiple measures of "philosophical constraint," or "closely interwoven attitudes arising from the same few abstract principles" (Lupton, Myers and Thornton 2017, also see Converse 1964) in an effort to identify whether judicial philosophical constraint exists, from where it is derived, and how the masses compare to elites.

Understanding if judicial philosophy constrains the masses is important for the simple reason that it underscores assessments of judges, courts, and the decisions those actors and institutions reach (e.g., Greene, Persily and Ansolabehere 2011; Krewson and Owens 2021,

2022). That is, the philosophy that judges employ clearly matters to the mass public. But, as we demonstrate throughout this paper, when the masses link philosophy to other attitudes, most seem to only connect the labels of philosophy, rather than connecting the content of the philosophy. In other words, individuals prefer (for example) "originalist" outcomes, but on average they are neither certain what "originalism" entails nor are they able to consistently apply the concept in a principled manner. Legal professionals are much more consistently constrained, highlighting that philosophical constraint may be the stuff of "legal elites," even though the masses employ the labels in their evaluation of courts and the law.

## Judicial Philosophy Preferences

The American mass public has long preferred judicial institutions to behave in a rigid, legalistic fashion. Indeed, Gibson, Caldeira and Spence (2005) write that the judiciary is supported in large part because of "...its connection to legality; to the extent that the Supreme Court can present its decision as grounded in legality, acquiescence is more likely." And, despite the fact that the majority of the mass public are legal realists and recognize the justices' decisions are influenced by their personal beliefs, the public still extends legitimacy and support to the institution (Gibson and Caldeira 2011; Gibson and Nelson 2017). Thus, courts are clearly incentivized to couch their decisions in legalistic terms to convey the neutrality of their opinions (see Rivero and Stone 2023).

There are multiple methods by which courts can convey this neutrality, including paying attention to the legal contours of decisions. For instance, Scheb and Lyons (2001) show that individuals strongly prefer legal over political influences on court outcomes. Similarly, Zink, Spriggs and Scott (2009) suggest that the treatment of precedent is one way "judges can signal the neutrality" of a decision. Using a particular judicial philosophy is another way that judges can suggest that outcomes are a product of a coherent orientation toward the law, rather than idiosyncratic political preferences. Indeed, precedent is used to demonstrate the "use of fair and neutral decision-making procedures, whereby similar cases

are consistently treated according to similar legal principles" (Zink, Spriggs and Scott 2009, 911).

The purpose of a judicial philosophy is similar. Consider, again, Justice Scalia's argument that philosophies are imperative, "If the law is to make any attempt at consistency and predictability," and that originalism "...by and large represents a coherent approach." Other philosophies similarly try to achieve consistency and predictability. Thus, inasmuch as judicial philosophies indicate consistent, coherent, and replicable legal decisions, it is sensible why the public would support their use. There is clear evidence that people care about both process and policy considerations when evaluating the judiciary (Tyler 2006).

There is some reason to expect that individuals *do* have some understanding of judicial philosophy. Elites discuss philosophies with some consistency (Asmussen 2011; Post and Siegel 2006; Steigerwalt 2010; Truscott 2023). Judicial philosophy is one of the most consistently discussed topics at salient televised Supreme Court confirmation hearings and interviews with justices, with few topics being discussed more frequently (see Glennon and Strother 2019; Ringhand and Collins 2010). The media tends to highlight the use of various judicial philosophies (Gerstein and Levine 2022; Liptak 2022). Press releases from members of Congress frequently invoke legal principles (Rivero and Stone 2023). Even judges speak, debate, and write about their own philosophies (Breyer and Scalia 2008; Scalia and Garner 2012; Scalia 1988), and commonly use language like "originalism" and "living document" when doing so.

What is more, scholarship reveals that Americans not only support the use of judicial philosophy among judges, but support *specific* judicial philosophies. Greene, Persily and Ansolabehere (2011) note that a "great majority of Americans feel comfortable expressing one or another view" regarding judicial philosophy (370). Although these preferences do align with partisan and ideological considerations—for instance, Krewson and Owens (2022) show that Democrats (Republicans) typically prefer living constitutionalism (originalism)—Greene, Persily and Ansolabehere (2011) highlight that people possess "nontrivial levels of

legal and political knowledge" (361). They further note that there is substance to these preferences. They are not merely "partisan slogan" but are viewed as "a legal argument and as a culturally embedded meme" (360).

Although scholarship consistently demonstrates that individuals recognize the labels of judicial philosophy and prefer outcomes that stem from their preferred philosophy, many important questions about the public's understanding of and orientation toward these philosophies remain unanswered. We are particularly interested in the cohesion with which individuals think about judicial philosophy, preferred outcomes, and their interaction. Although individuals seem to have firm preferences on philosophy, they are not always utilized by the masses the way they may be utilized by judges and other elites (who employ them in relatively consistent ways). Consider findings by Krewson and Owens (2022), who show that nearly 25% of Democrats/liberals support originalism and nearly 40% of Republicans/conservatives support living constitutionalism. 86% of self-identified liberals believe original intent—a legal principle most often utilized by conservative jurists—is important (Rivero and Stone 2023). Even some liberal judges espouse originalism (Elena Kagan stated "we are all originalists" at her confirmation hearing; see Litman 2021), but these findings show that there is some inconsistency in understanding what policies various judicial philosophies are likely to deliver.

Perhaps more pointedly, Greene, Persily and Ansolabehere (2011) write, "...data are consistent with the notion that a preference for originalism in a survey does not just reflect an incoherent reflex, but expresses a substantive legal, political, and cultural preference." Nevertheless, they continue on to state "At the same time, popular attitudes toward originalism show a certain incommensurability with other attitudes people hold...These results may well reflect that people simply do not understand questions about constitutional interpretation, or at least that they do not understand what follows from their answers" (417).[2]

[2]The supplemental appendix contains a more detailed description of the findings from political science research on judicial philosophy.

The observation that many "do not understand what follows from their answers" regarding judicial philosophy, and will support a philosophy that appears at odds with their self-identified political predispositions, strikes us as similar to the decades-long debate regarding ideology, ideological constraint, and "symbolic" versus "operational" ideology. Ideology is a structured, cohesive worldview from which attitudes should emanate (Converse 1964), but is also a label to which individuals are attached and which guides political choices (Mason 2018). Stated simply, few possess the overarching belief system (i.e., few exhibit constraint), but most are attached to terms like "liberal" and "conservative" (e.g., Devine 2015; Ellis and Stimson 2012; Mason 2018). Moreover, Ellis and Stimson (2012) demonstrate that many have mismatched ideological self-identification and policy attitudes (also see Lupton, Myers and Thornton 2017). For example, many who label themselves conservatives possess several liberal issue attitudes, such as on government spending.[3] Stated differently, many "do not understand what follows from their answers" about ideology. We suspect the same may be true with respect to judicial philosophy.

The literature on ideological constraint also identifies its main determinant: political sophistication. While the mass public has difficulty identifying "what goes with what" in the political world, this is not the case for political elites or for those in the masses who mirror political elites (as Lupton, Myers and Thornton (2015) call them, "hyper sophisticates"). Those higher in political expertise exhibit greater constraint (Federico and Schneider 2007). The masses possess (unconstrained) multidimensional preferences on policy, while elites possess (more tightly connected) unidimensional preferences (Lupton, Myers and Thornton 2015). Jacoby (1995) shows that those with greater educational attainment, political knowledge, and higher involvement in politics are better able to identify the ideological content of various political stimuli.

Just like with an overarching and structured ideology, judicial philosophies are so-

[3]Ellis and Stimson (2012) show this relationship is asymmetric. There are far more "conflicted conservatives" than "conflicted liberals."

phisticated, conceptual, and nuanced. Consider Scalia's (1988) description of applying his preferred philosophy, originalism:[4]

> ...the task requires the consideration of an enormous mass of material—in the case of the Constitution and its amendments...the records of the ratifying debates in all the states...it requires an evaluation of the reliability of that material—many of the reports of the ratifying debates...are thought to be quite unreliable...it requires immersing oneself in the political and intellectual atmosphere of the time—somehow placing out of mind knowledge that we have which an earlier age did not, and putting on beliefs, attitudes, philosophies, prejudices, and loyalties that are not those of our day. It is...a task sometimes better suited to the historian than the lawyer...

It is no small feat to apply a judicial philosophy, even for members of the highest court. It is sensible, then, that such a feat would approach insurmountability for those with no legal expertise, no training in assessing reliability, and no incentive to "place out of mind" contemporary beliefs and attitudes. For a mass public whose views are often dominated by an increasingly coalescing set of identities (Mason and Wronski 2018), judicial philosophy may take a backseat to any number of other forces that produce public opinion.

We are cautious to neither attribute too much sophistication to the masses (a la Downs 1957), nor set the bar for philosophical constraint too high (a la Converse 1964). Members of the public may well—consistent with extant research—identify with particular philosophies and perhaps even understand the general meaning of those philosophies. Nevertheless, we think they will be less likely to express preferences over judicial outcomes in concrete cases in a manner that is consistent and coherent (per Federico and Schneider (2007), they will be low in "horizontal constraint") or consistent with their self-reported preferred philosophy (per Lupton, Myers and Thornton (2017), they will be low in "vertical constraint"). Finally, to the extent we observe constraint, we think it will exist predominantly among more politically sophisticated Americans. This would suggest that judicial philosophy offers limited

[4]Although Scalia appears to view originalism as the more difficult of the philosophies to apply, he does not suggest that alterior approaches are "easy." Indeed, he speaks of the "principle difficulties with the...nonoriginalist approach..." as well.

benefit to the masses, as those who are constrained with respect to philosophy are those appearing to employ other forms of sophistication. Thus, we argue that it is those higher in legal/judicial sophistication—in our context, legal professionals and, perhaps, sophisticated masses—that will be better able to connect a philosophy to the individual elements of the legal world.

With these expectations in mind, we hypothesize:

> Hypothesis 1: Members of the mass public will exhibit low *absolute* levels of judicial philosophy constraint (of all measures).

> Hypothesis 2: Members of the mass public will exhibit low *relative* levels of judicial philosophy constraint, compared to legal professionals.

> Hypothesis 3: Greater non-legal sophistication (i.e., political) will relate to greater judicial philosophy constraint.

## Data and Methodology

We employ two separate samples to study our questions regarding judicial philosophy, though all survey items employed here were *identical* across surveys to facilitate direct comparisons. First, for the mass public, we collected 1,000 survey responses from adults in the United States as part of the 2022 Cooperative Election Study,[5] which offers nationally-representative samples.[6] Demographic details appear in Table A1 of the supplemental materials.

[5]When accounting for individuals who did not complete the requisite items for our survey, our final sample size is 872.

[6]As a result of institutional error, we received post-hoc determination of exempt status for this study from the sponsoring institution. Please see section L of the supplemental materials for information on why the research is deemed ethical under the U.S. federal IRB regulations.

As for legal professionals, we utilized the Prolific platform from March–June, 2025. While Prolific allows researchers to implement their own quota sample based on US census data, our major concern was sufficient power to make sound inferences regarding legal professionals. So, we used Prolific's "screeners," which allow researchers to screen on particular respondent characteristics, including employment sector characteristics (e.g., employer type, industry, organizational tenure). From these employment sector options, we opted to allow all who identify their work function as "legal" to take our survey.[7] Screening on work function, Prolific identified nearly 700 potential subjects that had been active in the 90 days prior to initial data collection. In all, our sample contains just under 500 respondents (although statistical analyses are often estimated on fewer respondents).

Of course, we recognize that this sample is not representative of *all* members of the legal profession. Other scholarship that focuses on members of the legal profession possess larger and potentially more representative samples, but do not employ survey instruments necessary for our analysis (Bonica and Sen 2017). Thus, we are circumspect about generalizing broadly; the sample of legal professionals in Prolific's pool may not reflect the population of legal professionals. Nevertheless, we believe ours is some of the first scholarship to directly compare mass attitudes to the attitudes of legal professionals. As it relates to the questions under consideration here—that is, whether the masses can utilize judicial philosophy—it is necessary to understand the philosophical attitudes of those in the legal profession. Indeed, previous scholarship on questions of constraint either presume a level of constraint to elites (e.g., Converse 1964) or, as we do, measure it directly (Lupton, Myers and Thornton 2015). So, we do not make broad claims about how well our estimates generalize to legal professionals, but we are comfortable assessing how masses compare.

In the interest of space, we report the demographic characteristics for our legal pro-

[7]Other, similar items, such as "industry," and the broadest "employment sector" item do not specifically ask about a respondents work role, but ask about the type of place they work. Thus, we believe these would be inappropriate items. We would be okay with in-house counsel at an accounting firm, but not an in-house accountant at a law firm. The item we screened on accounted for this difference.

fessionals sample in the supplemental appendix. But, in Table 1, we report the occupational breakdown of our sample. A plurality of respondents—42.33%—are attorneys or lawyers.[8] Paralegals and legal assistants comprise the next largest category. Thus, nearly 75% of our sample is made up of individuals who have attended law school or are active in the day-to-day work of the legal profession. Finally, about a quarter of the sample chooses "other." Often, these respondents gave more specific responses about their legal work, such as general counsel, mediator, court clerk, law clerk, legal coordinator.[9]

Table 1: Occupation of legal professionals sample.

| **Category** | **Count** | **Percent** |
|---|---|---|
| Paralegal/Assistant | 132 | 30.56 |
| Court Reporter | 9 | 2.08 |
| Attorney | 128 | 29.63 |
| Lawyer | 56 | 12.96 |
| Magistrate | 5 | 1.16 |
| Judge | 1 | 0.23 |
| Other | 101 | 23.38 |
| **Total** | 432 | 100.00 |

Our empirical examination unfolds in four parts. First, we consider whether individuals have firm preferences about judicial philosophy and whether they can consistently identify what, exactly, comes with philosophical labels. Next, we ask respondents their preferred outcome on a series of constitutional questions and determine their level of consistency (i.e., horizontal constraint). Third, we assess whether individuals consistently apply their self-reported preferences to particular constitutional outcomes (i.e., vertical constraint). Finally, we consider the role political sophistication plays. In all instances, we offer respondents "easy" tests of our theory. For instance, we consistently provide hints regarding which

[8]In casual usage in the United States, these terms are almost always are used interchangeably. In official terms, lawyers have earned a juris doctorate but may not be licensed to practice law. Attorneys are licensed to practice. Much like bourbon is a type of whiskey: All attorneys are lawyers, but not all lawyers are attorneys.

[9]In the supplemental appendix, we present information where we remove these "other" responses. Results remain unchanged.

judicial outcome aligns with which philosophy. Thus, should we find relatively low levels of constraint, we would possess *strong* evidence suggesting judicial philosophy does not constrain mass attitudes on legal issues (given that we designed the survey to maximize conceptual clarity).

## Preference Consistency

Research on public support for judicial philosophies typically presents respondents with descriptions of those philosophies, often paired with corresponding labels (Greene, Persily and Ansolabehere 2011; Krewson 2022; Rivero and Stone 2023). For example, a survey might ask whether respondents prefer originalism or living constitutionalism, explaining that the former sees constitutional meaning as fixed, while the latter allows it to evolve. Without such definitions, the public may not associate labels with their intended meanings. A respondent, for instance, might endorse originalism while believing the Constitution's meaning can change.

At the risk of invoking the "no true Scotsman" fallacy, we argue these two positions are incompatible. We accept that judicial philosophies vary, have many practitioners, and even staunch adherents may sometimes deviate (e.g., Scalia 1988). Still, at its core, originalism holds that judicial opinions ought to reflect "what the Constitution originally meant..." (Scalia 1988). To suggest its meaning is malleable—especially when "is fixed" is an option—contradicts a basic tenet of originalism. The same holds for living constitutionalism. Among legal professionals, even those not practicing constitutional law, we expect greater recognition of "what goes with what" in judicial philosophy. Thus, we anticipate different response patterns across our samples.

Table 2: Survey items tapping support for judicial philosophies.

| Survey Item | Originalist Response | Living Const. Response |
|---|---|---|
| Which of the following judicial philosophies do you agree with most? | Originalism | Living Constitutionalism |
| Which of the following two statements do you most agree with? | Meaning of the Constitution is fixed. | Meaning of the Constitution can change. |
| Judges should interpret the Constitution as generally understood... | At the time the constitutional provisions were written. | According to current views and sensibilities. |

We asked respondents three questions that tap support for judicial philosophies which, along with response options, are summarized in Table 2. Figure 1 shows the distribution of responses to each item, including the "not sure" responses. Beginning with mass responses to the most basic question about philosophy (i.e., panel A), we do not find support for the propositions put forth by other scholars regarding judicial philosophy. In the legal professionals sample (i.e., panel D), we observe a good deal more certainty. While extant research reports the existence of preferences about originalism or living constitutionalism, it does not report how readily people would decline stating a preference if given the opportunity to do so. We find that a plurality—44.55% of mass respondents—are not sure which philosophy they support when provided explicitly with this option. This value is much smaller for the professionals sample—only 23.76%.[10]

Mass respondents seem more comfortable stating that they believe the constitution should be interpreted using the values of yesterday or today (Panel B), as well as whether the meaning is fixed or malleable (Panel C). Still, 18.23% of respondents do not register a preference on whether the interpretation ought to be according to current views, and 17.22% are not sure whether the meaning is fixed. Those in the legal profession are, once again, more certain about their position, with only 8.0% stating they are unsure about how the constitution should be interpreted and 5.65% expressing uncertainty about whether the

[10]Note that "not sure" responses outpace originalist responses in the legal professionals sample. This is consistent with findings from Bonica and Sen (2017), who report that those in the legal profession tend to be more liberal.

meaning can change.

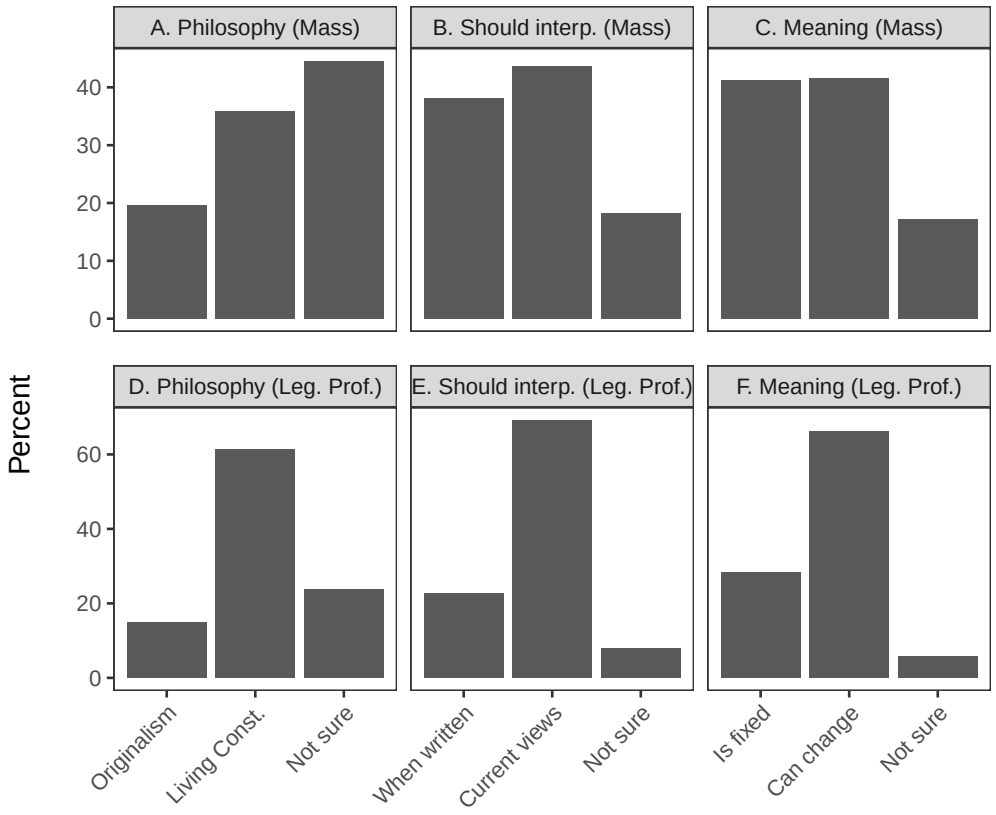


Figure 1: Barchart of responses to three items tapping support for judicial philosophy. "Mass" refers to CES sample and "Leg. Prof." to Prolific sample.

Next, we examine whether individuals express consistent positions across the three items. Our central question is whether respondents can hold a coherent originalist or living constitutionalist view. For example, can someone endorse originalism *and* also state that the Constitution's meaning is fixed? Such consistency would suggest some coherence in their understanding of judicial philosophy. Table 3 reports the percentage of respondents who provided definitive responses (i.e., did not select "not sure" for any item) and whose views were fully congruent, partially congruent, or fully incongruent. Fully incongruent responses indicate a stated preference for one philosophy (e.g., originalism), but align with the opposite philosophy on the remaining two items. Partial congruence means one item aligned with the stated philosophy and one did not. Full congruence indicates all three

responses were consistent with the same philosophy.

Table 3: Consistency of preferences regarding judicial philosophy, among those who did not answer "not sure" to any of the items.

| **Philosophy** | **Fully Incongruent** | **Partially (In)Congruent** | **Fully Congruent** |
|---|---|---|---|
| *Mass Sample*$^{*}$ | | | |
| Originalism | 3.48 | 3.02 | 28.54 |
| Living Constitutionalism | 13.92 | 9.28 | 41.76 |
| Overall | 17.40 | 12.30 | 70.30$^{*}$ |
| *Legal Professionals Sample*$^{\dagger}$ | | | |
| Originalism | 4.56 | 3.26 | 11.72 |
| Living Constitutionalism | 13.36 | 5.54 | 61.56 |
| Overall | 17.92 | 8.80 | 73.28$^{\dagger}$ |

Cell entries are percentages.

About $^{*}$43% of sample answered all three questions.

About $^{\dagger}$63% of sample answered all questions.

At first glance, there is some cause for optimism. First, over 70% of the mass sample offer fully congruent responses, suggesting that many respondents possess cogent, consistent views on judicial philosophy. And, the elite sample only outpaces the mass sample by about 3%, suggesting that familiarity with the legal field does little to aid the consistency of these preferences. However, only about half of the mass sample registered opinions other than "not sure" on all three items, meaning most respondents *necessarily* offered (at best) partially incongruent responses. Thus, we estimate that only about 30% of the mass public has preferences regarding judicial philosophy.[11] For the legal professionals sample, nearly half of the (full) sample appears to have congruent preferences. We note that this is a fairly conservative test of our hypothesis regarding constraint. Thus, we move on to measure cohesion in attitudes about philosophy more acutely, using measures of constraint developed by Federico and Schneider (2007) and employed by Lupton, Myers and Thornton (2017).

[11] About 43% of the mass sample answered all three questions. Of those, 70.3% were fully congruent. We simply multiply these percentages. The same goes for the legal professionals sample.

## Horizontal Constraint: How Interrelated are Attitudes?

One possibility is that individuals hold consistent views about how the Constitution should be interpreted but are confused by labels like "originalist" or "fixed meaning." Consider an originalist who believes that public floggings are cruel and unusual punishment, despite their use at the time the Eighth Amendment was ratified. This person might interpret "fixed meaning" to imply that such punishments remain acceptable today, and thus select "can change" when asked about constitutional interpretation. To account for this, we move beyond philosophical labels and examine outcome preferences in a series of hypothetical cases. By removing the labels, we may uncover greater consistency in underlying attitudes (given that the "not sure" responses are highest for the philosophy items).

We presented respondents with five different scenarios relating to constitutional interpretation on Miranda rights and Amendments six (right to counsel), four (search and seizure), one (political speech), and two (bear arms). For instance, respondents saw:

> Which of the following statements do you most agree with? The Second Amendment right to bear arms should apply...
>
> A. Only to the types of weapons common when the constitution was ratified.
>
> B. To all types of weapons, regardless of whether they existed when the constitution was ratified.
>
> C. Not Sure

Several things regarding these items are worthy of note. First, we are less concerned with responses to individual items than with patterns across all items, which our measure captures (discussed further below). Second, we deliberately avoided offering respondents clearly incongruent or illogical response options, as these are often confusing. For example, suggesting that the Second Amendment should apply to "all types of weapons" because they were "common when the Constitution was ratified" misrepresents historical reality and risks misleading participants. Moreover, respondents who found the options unclear or ill-fitting could select "not sure."

We also varied the phrasing of response options to avoid any bias that may arise from particular verbiage. For example, living constitutionalist responses were sometimes framed as "consistent with modern views and sensibilities" and other times as "ingrained in modern society." Originalist responses were framed as "consistent with traditional views of the Constitution" or "common when the Constitution was ratified." Full question wording is available in Section C of the supplemental materials.

These design choices constitute a conservative test of the philosophical constraint hypothesis. If respondents cannot align outcomes—even with clear cues about whether an option reflects originalism or living constitutionalism—we must conclude that philosophical constraint is weak, at least in the horizontal sense. Finally, we note that originalist reasoning does not always yield conservative outcomes. For example, interpreting the Second Amendment to apply "only to the types of weapons common when the Constitution was ratified" reflects an originalist logic but leads to a liberal policy outcome.

We first measure horizontal constraint, or the degree to which attitudes on these constitutional questions are interrelated. If attitudes are highly interrelated, we would possess evidence that support for outcomes is a function of some abstract principle (perhaps judicial philosophy).[12] If attitudes are weakly interrelated, we would possess evidence that attitudes are idiosyncratic rather than emanating from an abstract principle. To measure horizontal constraint, we code each originalist response as 1 and each living constitution position as 0. Then, we estimate a measure of entropy, or variability and inconsistency in how individuals responded across items. Intuitively, if one consistently applies a philosophical approach across all items (i.e., all items were a 0 or a 1), entropy will be zero—there is no variability or inconsistency. Thus, to measure horizontal constraint, we take the inverse of entropy such

[12]Our theory accepts that decisions on legal matters may emanate from a different abstract principle, such as ideology.

that high values indicate greater constraint.[13,14]

The left panel of Figure 2 compares the distribution of constraint, represented via kernel density estimation, for both samples. Higher values of constraint indicate more internally consistent response patterns. Both groups exhibit a bimodal distribution, with masses relatively more concentrated low in constraint and legal professionals relatively more concentrated high in constraint. This indicates that legal professionals have more structured and consistent patterns in their responses to our constitutional interpretation items. This implies that, relative to the masses, such individuals hold more coherent and constrained views. In the right panel, we see that the average level of constraint is significantly greater for the legal professionals sample.[15] Substantively, legal professionals exhibit about 32% more constraint than the mass sample.

These results comport with Hypotheses 1 and 2 regarding absolute and relative levels of constraint across samples. The masses exhibit very little consistency in their responses. We also stress that this was a fairly "easy" test for respondents. First, there were only four items; one could guess the "correct" response to all four about 6% of the time. Second, the response choices for all items contain hints as to which was the originalist position and which was the living constitutional position (while omitting the labels of each philosophy).

[13]Entropy is measured $H(X) = -\sum_{i=1}^{n} p_i \log_2 p_i$, where $p_i$ is the proportion of consistent responses, and $\log_2$ gives entropy in bits. Other scholars, like Federico and Schneider (2007), measure horizontal constraint using the standard deviation. This is an appropriate approach, and similar to entropy; indeed, our measure correlates with a standard deviation measure at 0.99. Because we are using dichotomous variables, we opt to use entropy to avoid symmetric assumptions. Furthermore, entropy measures response pattern consistency, compared with the item-level dispersion measured by standard deviation. Finally, we measure entropy omitting the First Amendment variable—although we partially employ it in our vertical constraint measure below—because a two-parameter logistic item response model indicates that this item does not scale well, while the others do. These estimates appear in the supplemental appendix. Also in the supplemental appendix, we re-estimate entropy while including this item. Distributions are understandably different, but substantive conclusions remain unchanged.

[14]"Not sure" responses are, necessarily, considered inconsistent in this context (i.e., if a respondent offered the originalist position on 3 of the items, but answered "not sure" on the fourth, it would be inappropriate to consider their responses fully constrained). In the supplemental material, we display horizontal constraint where we instead drop "not sure" responses. Understandably, horizontal constraint appears to be higher, but the sample size is significantly reduced when dropping these responses.

[15]The distributions are also significantly different per both a Kolmogorov–Smirnov test and a Wilcoxon rank-sum Test.

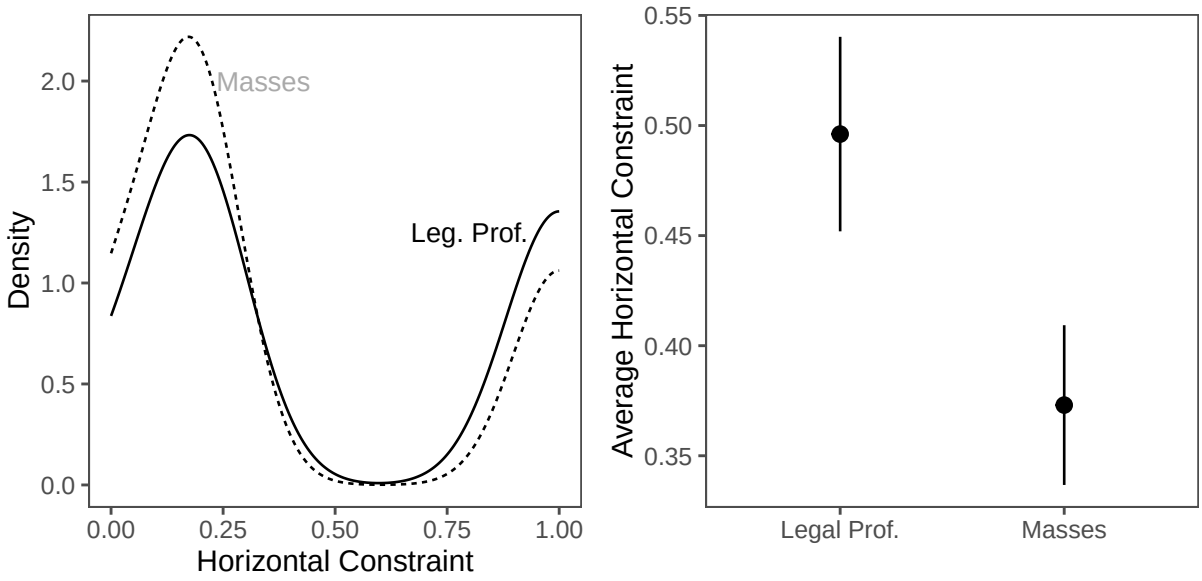


Figure 2: Distribution of horizontal constraint (measured as inverse of entropy across four constitutional interpretations) for mass and legal professionals samples (left panel). Average horizontal constraint by each sample (right panel). High values (i.e., low entropy) correspond to constraint.

Nevertheless, respondents failed to consistently choose one option or the other.

This suggests that the lack of consistency in matching labels with the central ideas of the philosophy—demonstrated in Table 3 above—is not merely a function of the specific labels or terminology used. When confronted with specific options for how to interpret the Constitution, the mass public does not seem to employ an abstract belief system consistently across the scenarios we provided, and professionals fare much better overall. Finally, we would be remiss to ignore the fact that the legal professionals, while performing much better at this task than the masses, are not themselves perfectly constrained. This highlights the importance of assessing a baseline level of constraint, rather than assume "legal elites" excel

at the task. Indeed, political elites vary in their levels of constraint as well (Lupton, Myers and Thornton 2017), so this is to be expected among sophisticated samples.

## Vertical Constraint: Are Attitudes Connected to Philosophy?

Horizontal constraint is only one component of an overall constrained belief system. Indeed, as Lupton, Myers and Thornton (2017) write, "A truly constrained belief system is...hierarchical, with specific issue attitudes flowing from the broad evaluative 'yardstick'" (894; also see Peffley and Hurwitz 1985). A constrained liberal, for example, should support government spending *because* of their liberalism; this is why the attitude exists. In the case of philosophical constraint, attitudes on specific legal/judicial issues ought to emanate from a broad belief system (i.e., philosophy). A constrained origifnalist should support an originalist decision *because* of their philosophy. Here, we examine the relationship between one's attitudes on the five constitutional questions and their stated philosophy. If an individual conceives of judicial outcomes vertically, or in terms of judicial philosophy, then we would expect their issue attitudes to strongly correlate with that philosophy.

Consistent with Lupton, Myers and Thornton's (2017) measure of vertical (ideological) constraint, we calculate the number of "philosophically correct" attitudes on each of the five hypothetical questions.[16] A "correct" attitude is one that corresponds to one's stated philosophical preference.[17] So, if one stated they support living constitutionalism and agrees that Miranda rights ought to "be guaranteed because they are ingrained in modern society,"

[16]Federico and Schneider (2007) and Lupton, Myers and Thornton (2017) employ an additional measure of vertical constraint, whereby they take the average absolute difference between one's placement on the ideology scale and their placement of individual items on the same scale. We cannot use this measure of vertical constraint. The ANES and CDS surveys used by those scholars each ask respondents to place themselves and policy items on the same scale. While we ask about philosophy preferences and about policies as they relate to philosophy, we cannot simply assert that these responses exist in the same space/on the same scale. We are uncertain whether originalism and living constitutionalism—fixed/changing—are poles of a single judicial philosophy continuum. Thus, a difference measure would be difficult to interpret with our data.

[17]Throughout this manuscript, the term "correct" never refers to a "correct" interpretation of the Constitution based on historical or contemporary doctrine. Rather, "correct" means an attitude consistent with a stated philosophy, or consistent with other philosophical attitudes.

theirs would be a "correct" attitude. Such an attitude would be "incorrect" among those who endorse a fixed meaning interpretation of the constitution.[18] If respondents are correct in most cases, we will possess evidence that their attitudes are a function of the higher-order construct, judicial philosophy. If respondents are incorrect in several cases, we will possess additional evidence that judicial philosophy offers minimal organizing principles to the mass public.

Given the considerable variation in responses across the three items measuring support for judicial philosophy (see Figure 1), we do not rely solely on the item explicitly labeled "philosophy." Instead, we estimate vertical constraint using all three: the philosophy item, the "meaning...is fixed/can change" item, and the "should interpret the Constitution..." item. To be precise, we assess vertical constraint using 15 possible "correct" responses (5 constitutional interpretation items $\times$ 3 philosophy indicators), rather than just 5 (i.e., "correct" on a single indicator). This approach biases our measure *toward* finding constraint—or *against* our theoretical expectation—by giving respondents more opportunities to align their preferences with at least one element of a judicial philosophy. Consider a respondent who (1) says the Second Amendment applies to weapons common when the Constitution was ratified (originalist view), (2) endorses living constitutionalism, and (3) states that the Constitution's meaning is fixed. If we relied solely on response (2), their response to the philosophy label, we would count their interpretation of the Second Amendment as "incorrect." But since we also consider their answer to the fixed/can change item (3), this individual would have one "correct" attitude, thus appearing more constrained. In short, our measure makes it easier for respondents to appear philosophically consistent than if we assessed correctness based only on a single philosophy item. Importantly, this makes it *more* difficult for us to find support for our hypotheses regarding low constraint.

[18] An attitude is always incorrect when respondents answer "not sure" in response to one of the five cases. See supplemental material for results when we drop the "not sure" responses.

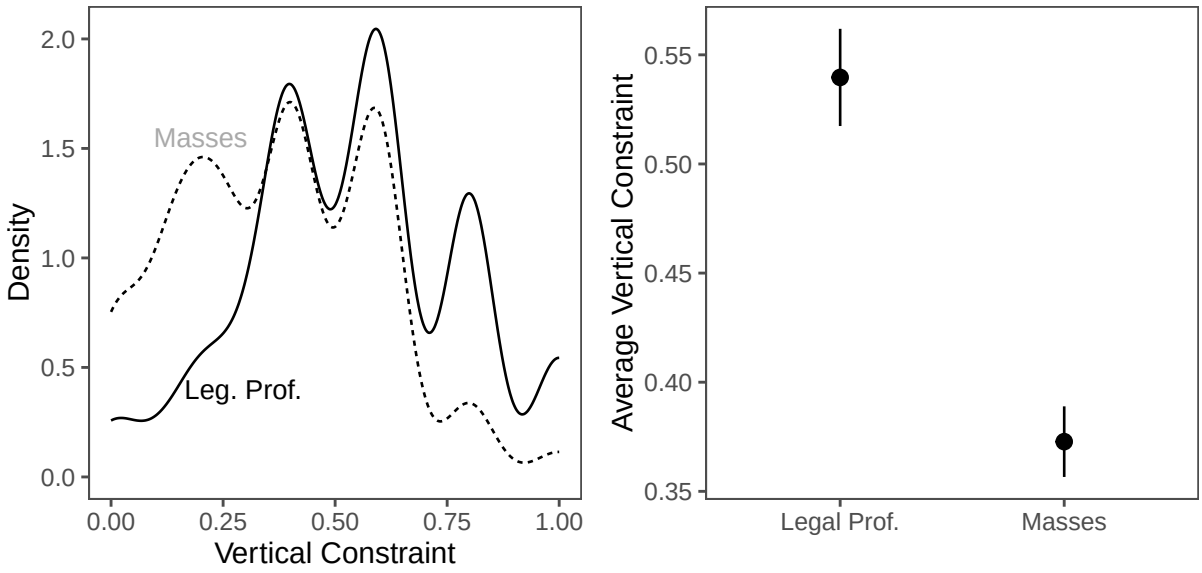


Figure 3: Distribution of vertical constraint for mass and legal professionals sample (left panel). Average vertical constraint by sample (right panel). Vertical constraint is the proportion of "correct" attitudes on the five constitutional issues, using each of the three philosophy items as a baseline. Specifically, denominator for the proportion is 15.

Figure 3 compares vertical constraint between legal professionals and the general public. The left panel displays kernel density estimates of constraint scores for each group. The distribution for legal professionals (solid line) is skewed toward higher values, reflecting greater philosophical consistency across issues. In contrast, the mass public (dotted line) clusters more heavily at the lower end of the scale, suggesting less structured or coherent responses. The legal professionals' distribution is also more concentrated, with several peaks at higher constraint levels, whereas the mass public shows a broader and more diffuse pattern. The right panel presents the average vertical constraint for each group. Legal professionals have a higher mean score—approximately 0.54—compared to about 0.38 for the mass public.

This represents roughly 45% more constraint among legal professionals, a difference that is statistically meaningful.[19] Overall, Figure 3 provides evidence that legal professionals, or "legal elites," demonstrate substantially more structured philosophical reasoning than the general public. This finding aligns with broader research on elite–mass differences in political constraint.

### *Vertical Constraint with Ideological Baseline*

The results above suggest that legal professionals possess greater levels of constraint than the masses. However, it may simply be the case that these professionals can utilize their training to structure legal and judicial attitudes, but the masses use some other, non-philosophical organizing principle to structure theirs. That is, if people ignore philosophy in favor of outcomes, then ideology might explain our results. We therefore consider judicial philosophy constraint in ideological terms, where a correct response to a case outcome is one that matches one's ideological self-identification. For example, if a conservative selected that the Second Amendment right to bear arms should apply to all types of weapons, their response demonstrates ideological constraint but *not* philosophical constraint.[20] Figure 4 displays the distribution of vertical constraint for ideologically "correct" responses (left panel) and the average level of constraint (right panel).

[19]The distributions differ significantly based on both a Kolmogorov–Smirnov test and a Wilcoxon rank-sum test.

[20]For the items regarding the First and Second Amendments, the conservative policy is reached via a liberal philosophy, and vice versa. Thus, one can be fully ideologically constrained or fully philosophically constrained, but not both.

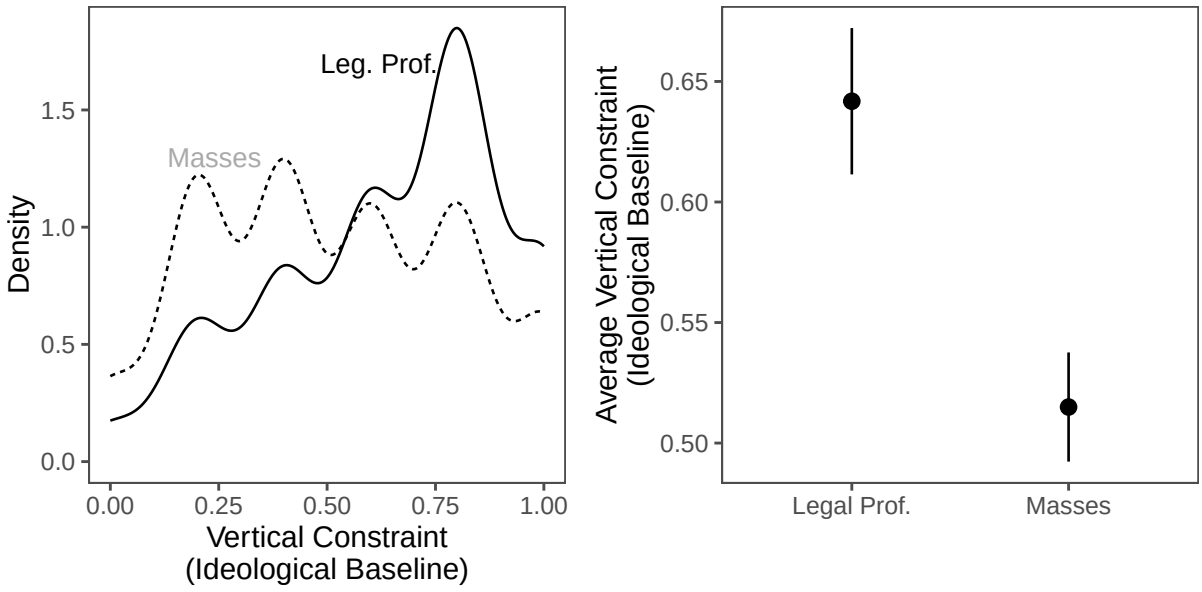


Figure 4: Distribution of vertical constraint using ideology to determine a "correct" response. Vertical constraint here is the proportion of "correct" attitudes on five constitutional issues.

We see nearly identical—indeed, perhaps stronger—patterns here. For the masses, there is little evidence of vertical constraint even in terms of ideology, consistent with extant scholarship (Converse 1964). For legal professionals, who display about 25% more constraint, their level of vertical constraint using an ideological baseline outpaces their constraint using philosophy as a baseline.[21] Legal professionals are constrained in *both* realms. For the masses, the most common situation is the selection of ideologically inconsistent outcomes or "not sure" responses. Ideology does not seem to serve as an organizing principle when it comes to making legal choices.

[21]Kolmogorov–Smirnov and Wilcoxon rank-sum tests show the distributions in Figure 4 are significantly different.

## The Role of Sophistication in Judicial Philosophy Constraint

As we have shown, many in the mass public who can identify a judicial philosophy do not appear to understand what it entails, and even more cannot apply it. Respondents often "do not understand what follows from their answers" (Greene, Persily and Ansolabehere 2011, 417). In this final empirical section, we consider whether constraint in judicial philosophy is simply a function of political sophistication—that is, confined to those who likely understand the implications of their views. This could explain why many endorse a philosophy but fail to recognize which decisions follow from it (a la "symbolic" ideology; see Ellis and Stimson 2012). Political stimuli vary in ideological content, and only the most politically knowledgeable and engaged are consistently able to recognize such content (Jacoby 1995). Recognizing and adopting ideological labels is easy; consistently applying an ideological belief system is difficult, and few in the public can do so (Lupton, Myers and Thornton 2015). We suspect a similar pattern holds for judicial philosophy.

To examine this, we estimate ideological constraint using responses to 11 CES policy items, including preferences on health care, gun control, immigration, abortion, environmental policy, and policing. This analysis is limited to the mass sample (we assess the legal professional sample below). Note that this is a different measure of ideological constraint than presented earlier.[22] Here, we define constraint as the proportion of correct responses across the 11 policy items, consistent with extant scholarship (e.g., Lupton, Myers and Thornton 2017).[23]

Figure 5 displays the level of vertical constraint across levels of ideological constraint. We see that the average level of judicial philosophy constraint is related to one's level of adherence to ideological principles. In other words, those who are consistent on policy (i.e.,

[22]In Figure 4, "ideology" refers to constraint based on judicial philosophy, where correct responses were those aligned with one's stated philosophy on constitutional questions. Here, ideological constraint is based on general policy attitudes and is unrelated to judicial matters.

[23]For example, supporting "Always allow a woman to obtain an abortion as a matter of choice" is coded as a correct response for liberals, and opposition as incorrect.

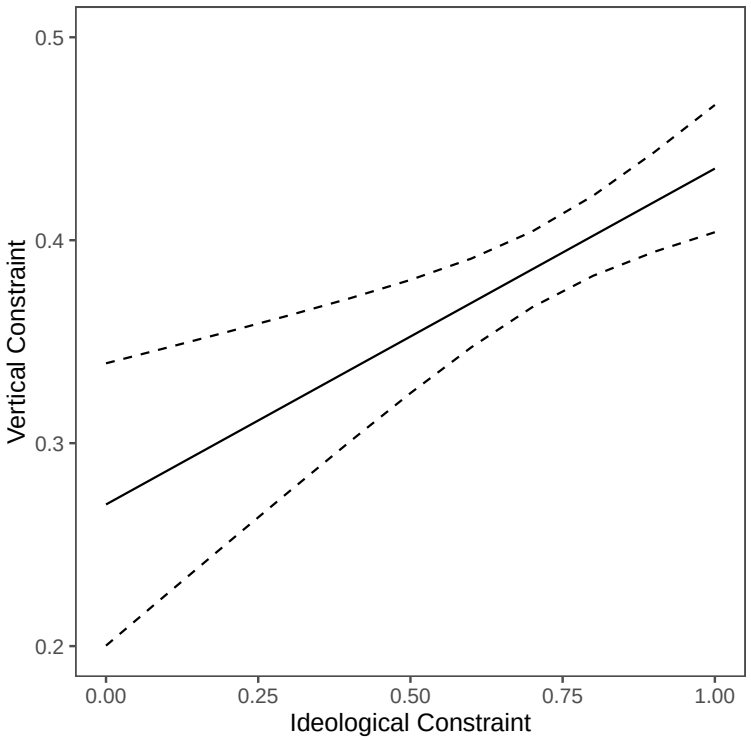


Figure 5: Vertical constraint by ideological constraint. Mass sample only. Ideological constraint is measured using 11 general policy items from the CES. Dashed lines are 95% confidence intervals around estimate.

display ideological constraint) are the most able to consistently apply a judicial philosophy. However, note that vertical constraint is not particularly high in any instance.

To further probe whether constraint in judicial philosophy is linked to broader political sophistication, we reexamine the "not sure" responses to the three items measuring support for a philosophy (i.e., those detailed in Table 2). If sophistication unrelated to the judiciary predicts whether one registered a preference on the philosophy, fixed/changing meaning, and appropriate interpretation items, we would find support for our contention that sophistication might explain variability in philosophy. To measure political sophistication, we follow advice of Luskin (1987) and utilize multiple measures. Specifically, we extract the first principal component from a principal component analysis (PCA) of three indicators: education, the ability to identify the party in control of the House of Represen-

tatives, and ideological constraint.[24] We then estimate separate logistic regression models predicting "not sure" responses using sophistication as a key predictor, along with controls for partisanship, self-reported ideology, sex, and race. (See the supplemental materials for detailed measurement procedures and full model results.)

In Figure 6, we display the predicted probability of a "not sure" response across the range of our measure of sophistication. First, note that the coefficient for sophistication is negative and statistically significant (at the $p \leq 0.05$ level) in all three models. That is, the combination of ideological constraint, political knowledge, and education all decrease the probability that an individual responds "not sure" to each of the three philosophy items. To even register an opinion on questions of philosophy is a function of political sophistication that is, theoretically, orthogonal to judicial philosophy.

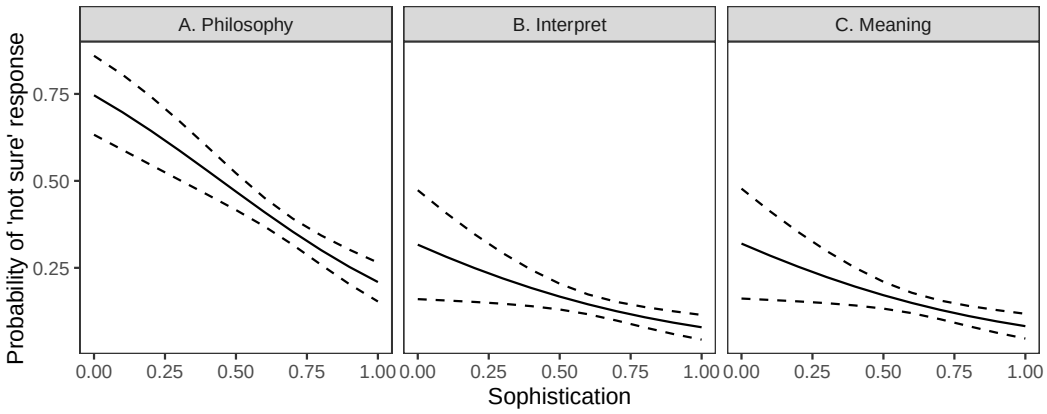


Figure 6: Model-based predicted probability of "not sure" response on philosophy, interpret, and meaning items, by sophistication. Sophistication is the first principal component following a PCA of knowledge, education, and ideological constraint.

[24]The PCA supports a unidimensional structure, with an eigenvalue of 1.37 for the first component and 0.87 for the second.

Because of space constraints on our Prolific survey, we were unable to measure the political sophistication and knowledge of the legal professionals sample. However, we still believe it is important to consider how the mass sample compares to legal professionals. To that end, we examine the level of vertical constraint across levels of education. We treat the education variable as categorical, meaning we do not place a priori expectations on who may exhibit greater constraint among those with similar educational attainment the way an ordered variable would. Attorneys, for example, have less educational attainment than medical doctors or those who hold a doctorate; we still expect attorneys to be more philosophically constrained. Similarly, paralegals have less formal education than one who holds a Master's degree; we expect paralegals to be more constrained.

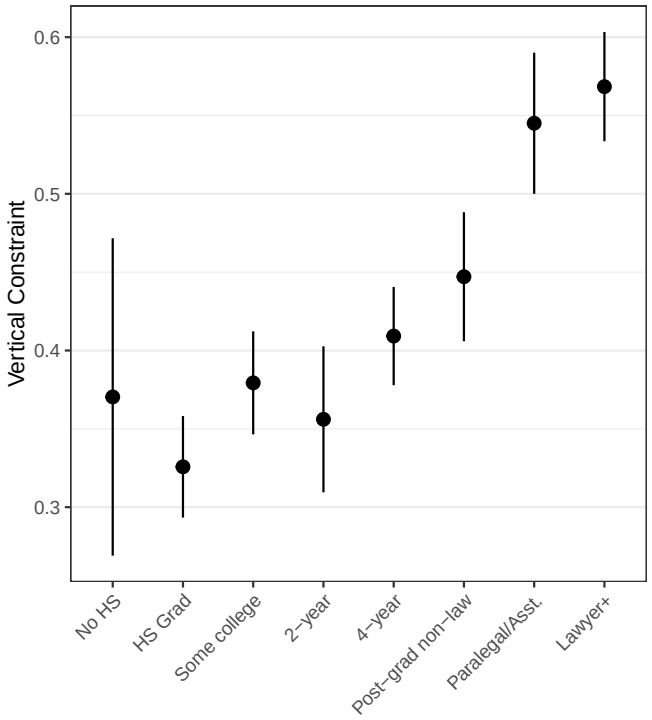


Figure 7: Mean vertical constraint by educational attainment, both samples. The paralegal/assistants and lawyer+ categories are from Prolific sample only. "Other" category from Prolific sample omitted. Vertical lines are 95% confidence intervals around means.

This is precisely what we find in Figure 7, which shows predicted constraint following an ordinary least squares regression onto a host of theoretically relevant control variables (see

appendix for full results).[25] As expected, those in the legal profession demonstrate greater vertical constraint than even those who may possess more educational attainment than most attorneys (e.g., those who hold a PhD or an MD). This is commensurate with the idea that operating in the legal profession provides some sort of constraining force on constitutional thought. Of course, this suggests that such thought is much more difficult for those who lack that training, even those who are highly skilled in other fields. More pointedly, these results suggest that legal philosophy—as a constraining set of abstract principles—is the stuff of legal professionals. When individuals engage in this philosophical talk or employ this philosophy, it is perhaps more symbolic in nature.

Finally, we consider the role ideological strength plays for masses and legal professionals. Again, we were unable to record ideological constraint for the legal professionals sample using the CES items. Figure 8 shows predicted levels of vertical constraint across levels of self-identified ideological strength, which simply folds the traditional 7-point ideology scale. These model-based estimates are derived from the same OLS regression mentioned above. Greater ideological strength leads to greater constraint for both samples, but legal professionals across all levels are consistently more constrained than the mass sample. This indicates two things. First, legal professionals—once again—outpace the masses in constraint, even when utilizing non-legal and non-philosophical considerations. Second, legal professionals are not constrained *exclusively* by legal philosophy. Indeed, given the close relationship between ideology and judicial philosophy (at least at the elite level, such as among judges), it is sensible that both serve as capping abstractions for those able to employ them consistently and coherently.

We are left with the question of whether judicial philosophy offers any organizing principles to the mass public when considering judicial outcomes. We are of two minds. On the one hand, it is plausible that the most sophisticated individuals are able to employ

[25]Note that "other" job type respondents are excluded from the Prolific sample for these estimates. See appendix for more information on "other" responses.

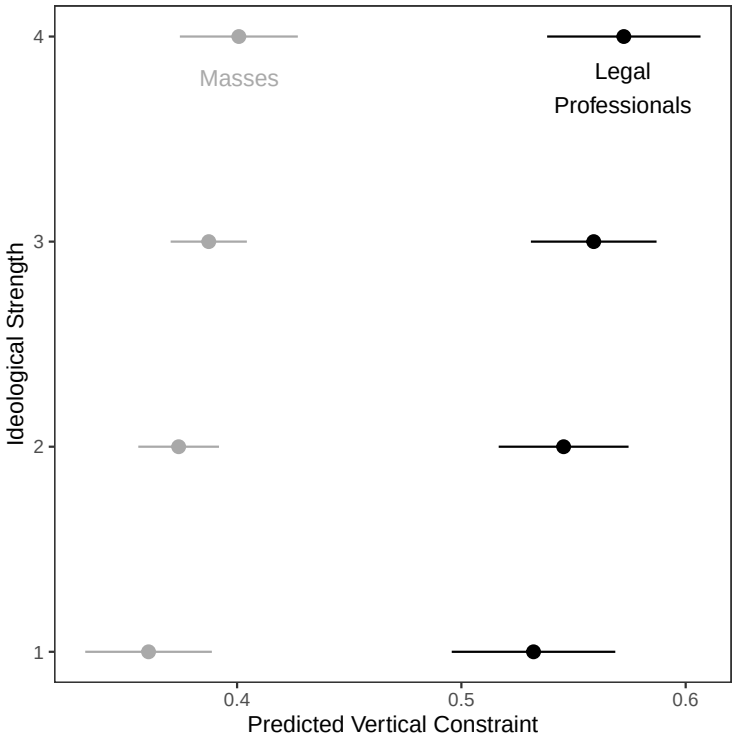


Figure 8: Predicted vertical constraint by level of ideological strength, across samples.

both ideological constraint and judicial philosophy constraint. The belief system they bring to bear is domain-specific. Yet, on the other hand, our understanding of the etiology and formation of mass opinion (e.g., Zaller and Feldman 1992) suggests that judicial philosophy constraint may simply be part and parcel of broader sophistication. Given our findings regarding those in the legal profession, there is some evidence in favor of both propositions. Both commitment to an ideology *and* legal professionalism lend themselves to constraint. In all, we believe judicial philosophy offers organizing principles to only a limited number of Americans.

## Conclusion

When judges explain what judges do, they often turn to their preferred philosophy (Breyer and Scalia 2008). When Senators question potential judges, they often ask about their preferred philosophy (Glennon and Strother 2019). When front-page news stories from

the *New York Times* cover oral arguments and decisions, they appear to always give attention to the legal principles and philosophies underlying a decision (Rivero and Stone 2023). The public seems to pay attention. Indeed, only a judge's ideology and legal qualifications are rated as more important to the public than philosophy. Philosophy is as important to the public as the judge's partisanship, and it matters more than personality, religion, age, race, or sex (Krewson and Owens 2022).

With evidence of elite attention to and public prioritization of a judge's judicial philosophy, it would be easy to infer that people have well-developed understandings of judicial philosophy and apply them consistently in scenarios. Many scholars present evidence to this effect (Greene, Persily and Ansolabehere 2011; Krewson and Owens 2022; Rivero and Stone 2023). Our findings suggest, however, that preferences regarding judicial philosophy lack the coherence and constraint required to consistently guide their attitudes in a principled manner. Many individuals do not state a preferred philosophy (when able to respond "not sure"), though we find some evidence of consistency in understandings of judicial philosophy for those who do state a view. Yet, when we compare the mass public to the legal professionals baseline, we find that the masses fare poorly. Even if the masses understand the philosophy they support, we find little evidence that people apply their self-reported judicial philosophy preferences in a consistent or coherent manner across issues.

This is significant given the prominence of judicial philosophy in public debates regarding the judiciary. While scholarship establishes that judicial philosophy is at the top of people's minds when thinking about judges, our findings demonstrate that the public's preferences regarding judicial philosophy are also incoherent. In the end, public preferences regarding judicial philosophy may be more symbolic than substantial. This means that elites can win public support through invoking these concepts. The president and members of Congress can grow support for nominees (Krewson and Owens 2021, 2022), and even judges can grow decision acceptance by describing their decisions in philosophical terms (Rivero and Stone 2023). Yet, our findings show that beyond simple labels, the public can-

not validate if what these elites claim is true. This makes it incredibly difficult for the public to hold elites accountable if they use these concepts selectively to promote their agendas, and such accountability is essential for our democratic system of government (canonically, see Tocqueville 1900).

Future researchers should consider how the public's lack of constraint and true understanding of complex concepts extend to other legal and non-legal attitudes, and how they may influence views of the judiciary, other political institutions, and the political world writ large. Our Framer's designed federal judges to be isolated and independent from the will of the majority. That is, they are already protected from many traditional mechanisms of democratic accountability. And, the public's lack of understanding only exacerbates this gap. In addition to our findings, other work demonstrates that many are unable to articulate constitutional rights (Armaly and Enders 2024), despite the fact that our political system relies on "rights talk" (Glendon 1991). This is particularly troublesome when taken in light of Tocqueville's (1900) warning of the "omnipotence of majority"—support for a particular philosophy or understanding of the Constitution without understanding. Finally, given Americans' veneration for the United States Constitution (McCloskey 2010; Brown and Pope 2019), evidence that preferences over constitutional interpretation vary by the age of the document being interpreted and other institutional features (Brown and Krewson 2024), and the heavy application of studies of judicial philosophy to the American context (Greene, Persily and Ansolabehere 2011; Krewson and Owens 2021, 2022; Rivero and Stone 2023), it would be fruitful to consider how preferences over legal philosophy and associated levels of constraint might generalize to other countries and contexts.

## References


Archives, National. 2017. "President Donald J. Trump Nominates Judge Neil Gorsuch to the United States Supreme Court." National Archives.
**URL:** *https://trumpwhitehouse.archives.gov/presidential-actions/president-donald-j-trump-nominates-judge-neil-gorsuch-united-states-supreme-court/*

Armaly, Miles T and Adam M Enders. 2023. "The Partisan Contours of Attitudes About Rights and Liberties." *Political Behavior* pp. 1–21.

Armaly, Miles T and Adam M Enders. 2024. "The partisan contours of attitudes about rights and liberties." *Political behavior* 46(2):1079–1099.

Asmussen, Nicole. 2011. "Female and Minority Judicial Nominees: President's Delight and Senators' Dismay?" *Legislative Studies Quarterly* 36(4):591–619.

Bonica, Adam and Maya Sen. 2017. "The politics of selecting the bench from the bar: the legal profession and partisan incentives to introduce ideology into judicial selection." *The Journal of Law and Economics* 60(4):559–595.

Breyer, Stephen and Antonin Scalia. 2008. "A Conversation on the Constitution with Justices Stephen Breyer and Antonin Scalia: Judicial Interpretation." Annenberg Public Policy Center, Annenberg Classroom: `https://www.annenbergclassroom.org/resource/conversation-constitution-judicial-interpretation/`.

Brown, Adam R and Christopher N Krewson. 2024. "Constitutional Recency and Support for Judicial Review." *Journal of Law and Courts* pp. 1–18.

Brown, Adam R and Jeremy C Pope. 2019. "Measuring and manipulating constitutional evaluations in the states: Legitimacy versus veneration." *American Politics Research* 47(5):1135–1161.

Collins Jr, Paul M, Lori Ringhand and Christina Boyd. 2023. *Supreme Bias: Gender and Race in US Supreme Court Confirmation Hearings*. Stanford University Press.

Comiskey, Michael. 1993. "Can the Senate Examine the Constitutional Philosophies of Supreme Court Nominees?" *PS: Political Science & Politics* 26(3):495–500.

Converse, Phillip E. 1964. The Nature of Belief Systems in Mass Publics. In *Ideology and Discontent*, ed. David E. Apter. New York: Free Press pp. 206–261.

Delli Carpini, Michael X. and Scott Keeter. 1996. *What Americans Know About Politics and Why it Matters*. New Haven: Yale University Press.

Devine, Christopher J. 2015. "Ideological Social Identity: Psychological Attachment to Ideological In-Groups as a Political Phenomenon and a Behavioral Influence." *Political Behavior* 37(3):509–535.

Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper.

Ellis, Christopher and James A. Stimson. 2012. *Ideology in America*. Cambridge University Press.

Ellis, Jenna. 2018. "Judge Brett Kavanaugh is Neil Gorsuch 2.0, a huge accomplishment for Trump." Washington Examiner.
**URL:** *https://www.washingtonexaminer.com/opinion/1180053/judge-brett-kavanaugh-is-neil-gorsuch-2-0-a-huge-accomplishment-for-trump/*

Federico, Christopher M and Monica C Schneider. 2007. "Political expertise and the use of ideology: Moderating effects of evaluative motivation." *Public Opinion Quarterly* 71(2):221–252.

Gerstein, Josh and Marianne Levine. 2022. "Cursing senators, judicial philosophy and document demands: 5 takeaways from Jackson hearing." *Politico* .

Gibson, James L. and Gregory A. Caldeira. 2011. "Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court?" *Law and Society Review* 45(1):195–219.

Gibson, James L, Gregory A Caldeira and Lester Kenyatta Spence. 2005. "Why do people accept public policies they oppose? Testing legitimacy theory with a survey-based experiment." *Political Research Quarterly* 58(2):187–201.

Gibson, James L and Michael J Nelson. 2017. "Reconsidering positivity theory: What roles do politicization, ideological disagreement, and legal realism play in shaping US Supreme Court legitimacy?" *Journal of Empirical Legal Studies* 14(3):592–617.

Glendon, Mary Ann. 1991. *Rights talk: The impoverishment of political discourse.* Free Press.

Glennon, Colin and Logan Strother. 2019. "The maintenance of institutional legitimacy in Supreme Court justices' public rhetoric." *Journal of Law and Courts* 7(2):241–261.

Grassley, Senator Chuck. 2021. "Prepared Opening Statement by Senator Chuck Grassley of Iowa, Ranking Member, Senate Judiciary Committee Hearing to Consider Supreme Court Nominee Judge Ketanji Brown Jackson." U.S. Senate Committee on the Judiciary.
**URL:** $https://www.judiciary.senate.gov/scotus_grassley-opening-statement$

Greene, Jamal, Nathaniel Persily and Stephen Ansolabehere. 2011. "Profiling originalism." *Colum. L. Rev.* 111:356.

Guliuzza, III, Frank, Daniel J. Reagan and David M. Barrett. 1994. "The Senate Judiciary Committee and Supreme Court Nominees: Measuring the Dynamics of Confirmation Criteria." *Journal of Politics* 56(3):773–787.

Hannity, Sean. 2018. "What Trump is looking for in his next Supreme Court justice." Fox News.

**URL:** *https://www.foxnews.com/transcript/what-trump-is-looking-for-in-his-next-supreme-court-justice*

Jacoby, William G. 1995. "The Structure of Ideological Thinking in the American Electorate." *American Journal of Political Science* pp. 314–335.

Krewson, Christopher N. 2022. "Political Hearings Reinforce Legal Norms: Confirmation Hearings and Views of the United States Supreme Court." *Political Research Quarterly* p. 10659129221094877.

Krewson, Christopher N and Ryan J Owens. 2021. "Public support for judicial philosophies: evidence from a conjoint experiment." *Journal of Law and Courts* 9(1):89–110.

Krewson, Christopher N and Ryan J Owens. 2022. "Judicial Philosophy and the Public's Support for Courts." *Political Research Quarterly* p. 10659129221119741.

Lane, Robert Edwards. 1962. "Political ideology: Why the American common man believes what he does.".

Lee, Suevon. 2012. "Reading Guide: Where Romney and Obama Stand on the Supreme Court." ProPublica.
**URL:** *https://www.propublica.org/article/reading-guide-where-romney-and-obama-stand-on-the-supreme-court*

Liptak, Adam. 2022. "By Turns Cautious and Confident, Judge Jackson Takes the Stage." *The New York Times* .

Litman, Harry. 2021. "Originalism, Divided." *The Atlantic* .

Lupton, Robert N., William M. Myers and Judd R Thornton. 2015. "Political Sophistication and the Dimensionality of Elite and Mass Attitudes, 1980- 2004." *Journal of Politics* 77(2):368–380.

Lupton, Robert N., William M. Myers and Judd R. Thornton. 2017. "Party Animals: Asymmetric Ideological Constraint among Democratic and Republican Party Activists." *Political Research Quarterly* 70(4):889–904.

Luskin, Robert C. 1987. "Measuring Political Sophistication." *American Journal of Political Science* 31:856–899.

Mason, Lilliana. 2018. "Ideologues without issues: The polarizing consequences of ideological identities." *Public Opinion Quarterly* 82(S1):866–887.

Mason, Lilliana and Julie Wronski. 2018. "One Tribe to Bind Them All: How Our Social Group Attachments Strengthen Partisanship." *Political Psychology* 39:257–277.

McCloskey, Robert G. 2010. *The American supreme court*. University of Chicago Press.

Peffley, Mark A and Jon Hurwitz. 1985. "A hierarchical model of attitude constraint." *American Journal of Political Science* pp. 871–890.

Politico. 2018. "Trump Picked Kavanaugh. How Will He Change the Supreme Court?" Politico Magazine.
**URL:** *https://www.politico.com/magazine/story/2018/07/09/donald-trump-brett-kavanaugh-supreme-court-218963/*

Post, Robert and Reva Siegel. 2006. "Questioning Justice: Law and Politics in Judicial Confirmation Hearings." *Yale LJ Pocket Part* 115:38.

Ringhand, Lori A and Paul M Collins, Jr. 2010. "May it please the senate: An empirical analysis of the senate judiciary committee hearings of Supreme Court nominees, 1939-2009." *Am. UL Rev.* 60:589.

Rivero, Albert H. and Andrew R. Stone. 2023. "The American Public's Attitudes over How Judges Use Legal Principles to Make Decisions." *Political Science Research and Methods* pp. 1–16.

Scalia, Antonin. 1988. "Originalism: The Lesser Evil." Teaching American History Available: https://teachingamericanhistory.org/document/originalism-the-lesser-evil/.

Scalia, Antonin and Bryan A. Garner. 2012. *eading Law: The Interpretation of Legal Texts*. Thompson West.

Scheb, John M. and William Lyons. 2001. "Judicial Behavior and Public Opinion: Popular Expectations Regarding the Factors that Influence Supreme Court Decisions." *Political Behavior* 23(2):181–193.

Steigerwalt, Amy. 2010. *Battle Over the Bench: Senators, Interest Groups and Lower Court Confirmations*. University of Virginia Press.

Tocqueville, Alexis de. 1900. Alexis de Tocqueville: Democracy in America: A new translation by Henry Reeves. Colonial Press.

Truscott, Jake S. 2023. "Analyzing the Rhetoric of Supreme Court Confirmation Hearings." *The Journal of Law and Courts* .

Tyler, Tom R. 2006. *Why People Obey the Law*. Princeton university press.

Uscinski, Joseph E, Adam M Enders, Michelle I Seelig, Casey A Klofstad, John R Funchion, Caleb Everett, Stefan Wuchty, Kamal Premaratne and Manohar N Murthi. 2021. "American politics in two dimensions: Partisan and ideological identities versus anti-establishment orientations." *American Journal of Political Science* 65(4):877–895.

Walsh, Edward and Al Kamen. 1987. "Senate Panel Votes 9-5 to Reject Bork.".

Zaller, John and Stanley Feldman. 1992. "A Simple Theory of the Survey Response: Answering Questions versus Revealing Preferences." *American Journal of Political Science* 36(3):579–616.

Zink, James R., James F. Spriggs, II and John T. Scott. 2009. "Courting the Public: The Influence of Decision Attributes on Individuals' Views of Court Opinions." *Journal of Politics* 71(3):909–925.

# Supplemental Appendix

**A Political Science Research on Judicial Philosophy** **ii**

**B Philosophy Items Justifications and Question Wording** **iv**

**C Prolific Question Wording** **vii**

**D Demographics** **ix**

**E Excluding "Not Sure" Responses** **x**

**F Excluding "Other" Responses** **xi**

**G Disaggregating the Elite Sample** **xii**

**H Horizontal Constraint with First Amendment Item** **xvi**

**I Full Logistic Regression Results** **xvii**

**J Full Results for Vertical Constraint Regression** **xx**

**K Ethical Declaration** **xxi**

K.1 Conflict of Interest . . . . . xxi

K.2 Research Involving Human and Animal Rights . . . . . xxi

**L CES IRB** **xxii**

# A Political Science Research on Judicial Philosophy

Recent scholarship establishes that Americans not only recognize judicial philosophies but that these orientations meaningfully shape their evaluations of judges, decisions, and courts. We do not contest this scholarship. Rather, our aim is to place in better context what, exactly, individuals are bringing to bear when a decision or attitude is motivated by judicial philosophy. For example, in Krewson and Owens (2021), respondents evaluated hypothetical Supreme Court nominees in a conjoint experiment where attributes such as partisanship, ideology, legal qualifications, and judicial philosophy were randomly varied. The judicial philosophy attribute was described in plain language; for example, originalists were said to "look to the intent of the Framers," while living constitutionalists "look to the evolving views and values of the American public when interpreting the Constitution." These authors show that when respondents are presented with information about judicial philosophies, they use that information to evaluate Supreme Court nominees—Republicans and conservatives tend to prefer originalist nominees, while Democrats and liberals favor living constitutionalists.

Krewson and Owens' subsequent work (2023) further demonstrates that judicial philosophy influences support for judges and decisions. Respondents first indicated their preference for either originalism or living constitutionalism in an adaptive conjoint task, and then evaluated judges and rulings in experimental scenarios where case outcomes and judicial philosophies were randomly varied, allowing the authors to test how alignment between a respondent's preferred philosophy and a judge's reasoning shaped trust and support for the decision. Even after accounting for ideology and partisanship, philosophy explains roughly 13% of the variance in evaluations—comparable in size to partisanship itself.

Rivero and Stone (2025) is less directly about philosophy, but still informs our expectations. They ask participants to evaluate how judges should use specific legal principles—like precedent, text, history, or public opinion—when deciding constitutional cases. Rather

than framing questions around judicial philosophies like originalism or living constitutionalism, respondents rate the importance of each individual principle, allowing the authors to map how the public prioritizes different tools of legal reasoning. The study finds broad, bipartisan support for traditional principles such as adherence to precedent and textual interpretation, but sharp ideological divides over less conventional principles like considering public opinion or international law. Importantly, these divisions widen among more politically knowledgeable respondents, and experimental evidence shows that when a Court decision's reasoning aligns with an individual's preferred principles, support for that decision increases—demonstrating that views about how judges ought to reason meaningfully shape public reactions to judicial outcomes.

Finally, Greene, Persily, and Ansolabehere (2011) analyze who identifies as an originalist and why. Respondents were asked whether the Supreme Court should base decisions only on the Constitution's original intentions or consider changing times, along with related questions about interpretive values and case outcomes. The study finds that while many Americans endorse originalist rhetoric in the abstract, few apply it consistently when faced with concrete issues (e.g., reading privacy rights into the constitution). Originalist preferences correlate not only with ideology and partisanship but also with cultural orientations toward hierarchy and moral order. The authors conclude that while originalism may operate like a coherent interpretive philosophy among some in the mass public, it is more of a political and cultural identity than it is a reflection of broader commitments to conservatism and traditionalism and a distinct legal reasoning.

## B Philosophy Items Justifications and Question Wording

Our design is novel for political science research analyzing judicial philosophy attitudes. We borrowed language from previous research when crafting the judicial philosophy labels, but our use of statements to measure horizontal (and vertical) constraint is novel. Therefore, we did not borrow from previous research for those statements. We sought to provide reasonable statements of judicial philosophy in concrete scenarios with the following types of variation:

- The judicial philosophies we examine are most commonly discussed in the context of constitutional disputes. To enhance generalizability, we examine judicial philosophy constraint in the context of multiple Constitutional amendments: 1st, 2nd, 4th, 6th, and Miranda. We did not have strong preferences about the specific constitutional issues we would examine, only that we provide a variety of constitutional, salient issues that people might care about.

- We wanted to vary the ideological outcomes such that a preference for originalism (living document) did not always imply a conservative (liberal) outcome. At times, this led us to create reasonable statements that have not been adopted by the Supreme Court in a specific case (see 2nd Amendment example). If every statement perfectly reflected reality, external validity might increase but we were wary of our research design becoming one that appeared simply to ask people to identify past Supreme Court decisions (for which task the public would fail and elites would excel but not for the reasons which our study cares about).

- The items each emphasized a specific judicial philosophy, but with variations in language so as to ensure that our results are not the product of a particular phrasing.

- (Prolific screener): Which of the following describes your function in your organization? By function, we mean the types of activities you complete in your role - not what your company does overall. [Only respondents who select "legal" were able to take our survey.]
- Philosophy, meaning, and interpretation question wording can be found in Table 2.
- Which of the following statements do you most agree with? The Fourth Amendment right against unreasonable searches and seizures should apply...
  - A. When the government physically trespasses on one's property, consistent with traditional views of the constitution.
  - B. To any situation in which the government violates expectations of privacy, consistent with modern views and sensibilities.
  - C. Not sure
- Which of the following statements do you most agree with? The Sixth Amendment right to counsel should apply...
  - A. To only serious crimes like capital offenses, as was accepted when the constitution was ratified.
  - B. To all crimes even though this was not widely accepted when the constitution was ratified.
  - C. Not sure.
- Which of the following statements do you most agree with? Miranda rights (right to remain silent, right to an attorney, etc.) should...
  - A. Not be guaranteed because there is no constitutional basis for them.
  - B. Be guaranteed because they are ingrained in modern society.
  - C. Not sure.
- Which of the following statements do you most agree with? The First Amendment right to free speech should apply to statements and monetary contributions to political campaigns...
  - A. Only made by individuals, as was accepted when the constitution was ratified.
  - B. Made by corporations, even though this was not widely accepted when the constitution was ratified.
  - C. Not sure.
- Which of the following statements do you most agree with? The Second Amendment right to bear arms should apply...
  - A. Only to the types of weapons common when the constitution was ratified.

– B. To all types of weapons, regardless of whether they existed when the constitution was ratified.

– C. Not Sure

## C Prolific Question Wording

- Is your work function in the legal field?
  - Yes
  - No
- What best describes your most recent position in the legal profession?
  - Paralegal or legal assistant
  - Court reporter
  - Attorney
  - Lawyer
  - Magistrate or justice of the peace
  - judge
  - Other
- Which of the following best describes the area of law in which you currently work or practice, or previously worked or practiced?
  - Bankruptcy
  - Corporate
  - Constitutional
  - Criminal Defense
  - Employment and labor
  - Environmental
  - Estate planning
  - Family
  - Government or military
  - Government or military; prosecutor
  - Immigration
  - Intellectual property
  - Medical
  - Personal injury
  - Real estate
  - Tax
  - Other

- How often do you practice law in a courtroom with a judge?
  - Never
  - Less than once a month
  - Once a month
  - A few times a month
  - Every week
  - Daily
- [If never is not selected in the previous question]
  What type of courtroom do you typically appear in? [SELECT ALL THAT APPLY]
  - Local court
  - State court
  - Federal court
  - Administrative court
  - Tribal
  - Other

# D Demographics

Table A1: Demographic comparison of CES and Prolific samples.

| | **CES** | **Prolific** |
|---|---|---|
| **Race (%):** | | |
| White | 69.1 | 70.66 |
| Black | 13.5 | 10.54 |
| Asian | 2.1 | 6.84 |
| Mixed | 3.4 | 8.26 |
| Other | 11.9 | 3.7 |
| **Education (%):** | | |
| No HS | 4.2 | – |
| HS Grad | 28.8 | 3.45 |
| Some College | 22.1 | – |
| 2-year | 11.1 | 6.21 |
| 4-year | 21.5 | 37.24 |
| Post-grad | 12.3 | 53.1 |
| **Party ID (%):** | | |
| Republican | 47.52 | 60.19 |
| Independent | 15.91 | 8.63 |
| Democrat | 36.57 | 31.18 |
| **Age (Median)** | 52 | 38 |
| **Female (%)** | 54.57 | 62.96 |

## E Excluding "Not Sure" Responses

Here, we display constraint when omitting respondents who stated "not sure" to any of the items included in calculating constraint. That is, the sample is comprised of only those who answered all five constitutional questions and all three philosophy items. In main text, constraint is estimated on much larger samples than when excluding "not sure" responses.

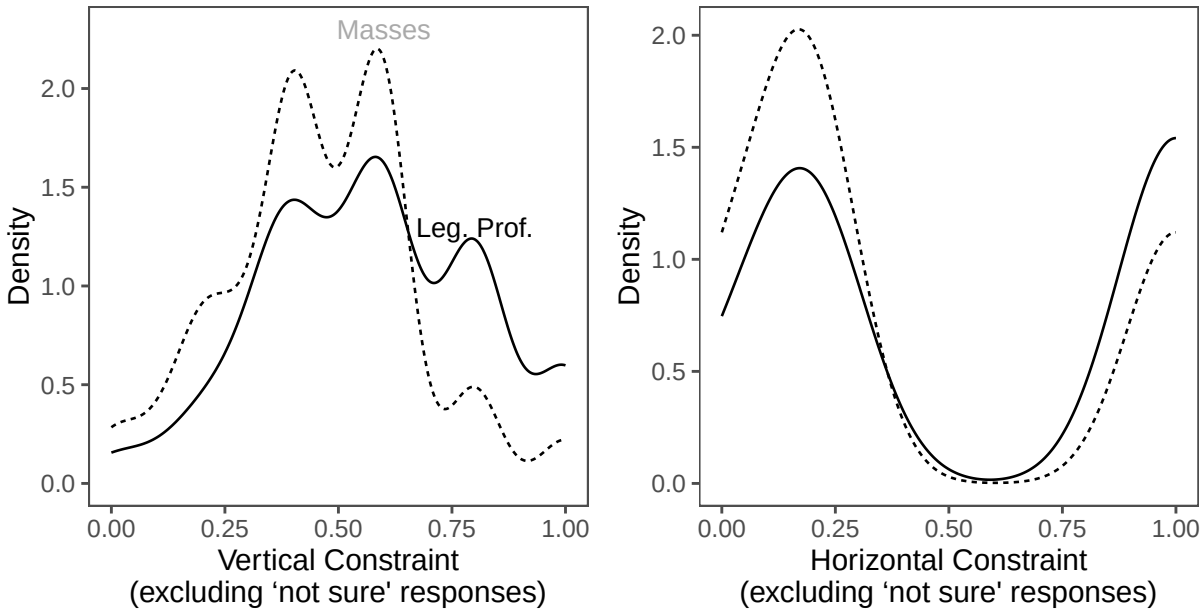


Figure A1: Constraint when excluding "not sure" responses.

While constraint is (understandably) higher in both instances, we draw the same conclusions when omitting "not sure" responses, especially when considering Hypothesis 2 (i.e., the relative constraint hypothesis). In all, we see that even the mass respondents who failed to employ "not sure" responses are still less constrained than those in the legal professionals sample. Thus, our conclusions in the main text are not driven by "not sure" responses.

## F Excluding "Other" Responses

Here, we display constraint when omitting respondents who stated "other" to the job type item on the Prolific sample. While several of these respondents do have jobs that require day-to-day engagement with the legal profession, others are more tangentially related to the legal field (e.g., law enforcement). To ensure that our results are robust to only including those whose first inclination is to state they work in one of our pre-defined categories (i.e., attorney, lawyer, judge, magistrate, paralegal, or legal assistant), we re-estimate constraint for both groups. The distributions can be found in Figure A2.

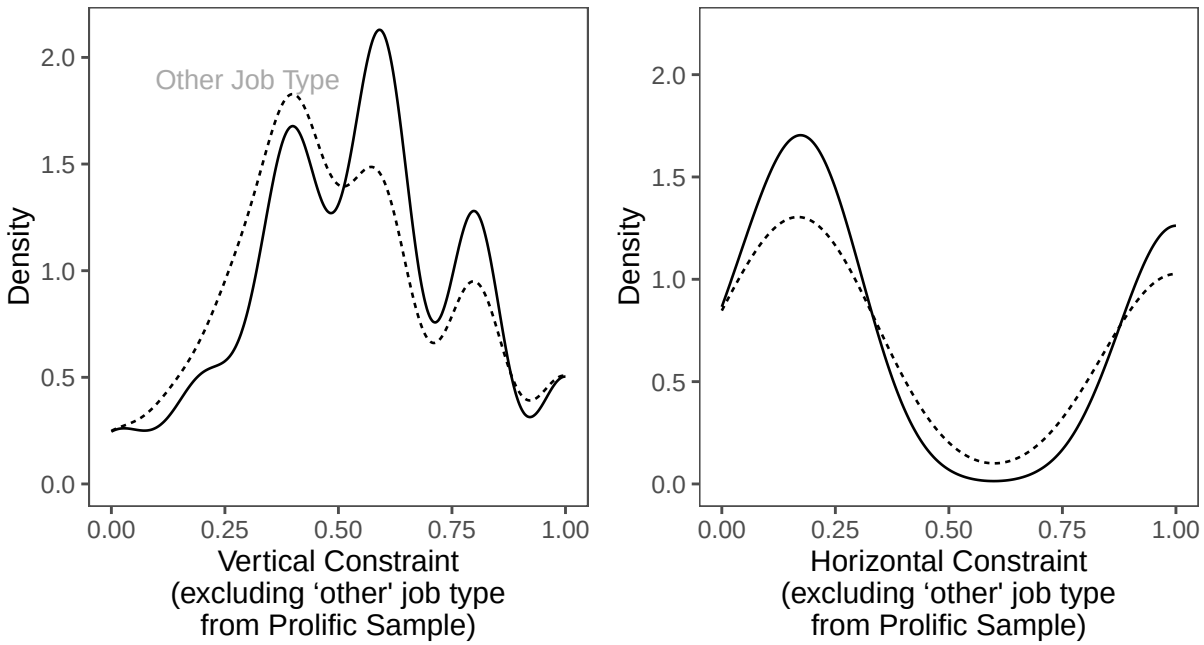


Figure A2: Constraint when excluding "other" job type responses from Prolific sample.

For both types of constraint, those in the "other" category have lower levels than those who select the concrete categories. Given that constraint is lower for "others," we feel safe in our assessment of legal professional constraint, especially as it pertains to differences between samples. That is, the direction of bias while including "other" responses is *toward* zero, or *against* our hypotheses. The differences we observe between the mass sample and the legal professionals sample in the main text would be *larger* if we omitted "other" job type responses. Thus, we opt to present constraint for the entire Prolific sample in the main text (save for the estimates used in Figure 7, which require some presumption of legal education).

# G Disaggregating the Elite Sample

In the main text our elite sample contains anyone who works in the legal profession. It is possible that those with either higher levels of legal education and/or individuals that make decisions that involve legal interpretation (e.g., attorneys, lawyers, judges, magistrates, and justices of the peace) are more constrained by their judicial philosophy than others in the legal elite (e.g., paralegals, legal assistants, and court reporters). In this section, we show the results from Figure 1 and Table 3 with the elite sample split into these two groups.

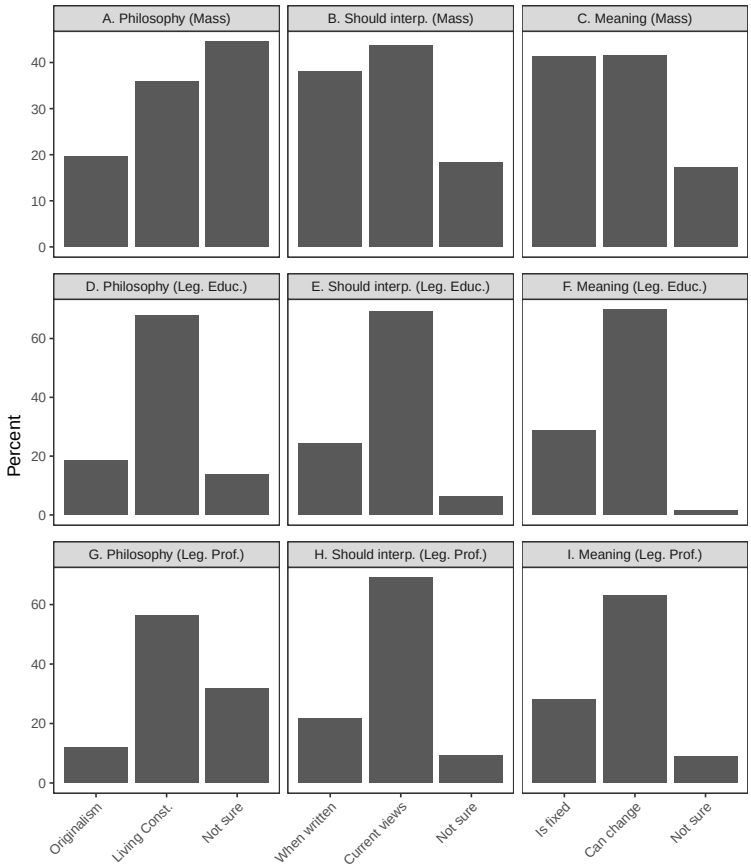


Figure A3: Barchart of responses to three items tapping support for judicial philosophy. "Mass" refers to CES sample, "Leg. Educ." to those Prolific sample with a legal education, and "Leg. Prof" those in the Prolific sample who work in the legal field without legal education.

Table A2: Consistency of preferences regarding judicial philosophy, among those who did not answer "not sure" to any of the items.

| **Philosophy** | **Fully Incongruent** | **Partially (In)Congruent** | **Fully Congruent** |
|---|---|---|---|
| *Mass Sample* | | | |
| Originalism | 3.48 | 3.02 | 28.54 |
| Living Constitutionalism | 13.92 | 9.28 | 41.76 |
| Overall | 17.40 | 12.30 | 70.30 |
| *Legal Education Professionals* | | | |
| Originalism | 0.64 | 5.80 | 14.74 |
| Living Constitutionalism | 3.85 | 10.26 | 64.74 |
| Overall | 4.49 | 16.06 | 79.48 |
| *Other Legal Professionals Sample* | | | |
| Originalism | 5.96 | 3.31 | 8.61 |
| Living Constitutionalism | 7.28 | 16.56 | 58.28 |
| Overall | 13.24 | 19.87 | 66.89 |

Cell entries are percentages.

It is also possible that those that work in certain areas of the legal profession (e.g., constitutional law, criminal defense, government or military, or as a prosecutor) are more constrained by their judicial philosophy than others in the legal elite. To examine this, we also reproduce the results from Figure 1 and Table 3 with the elite sample split into these two groups with all legal elites as the comparison group.

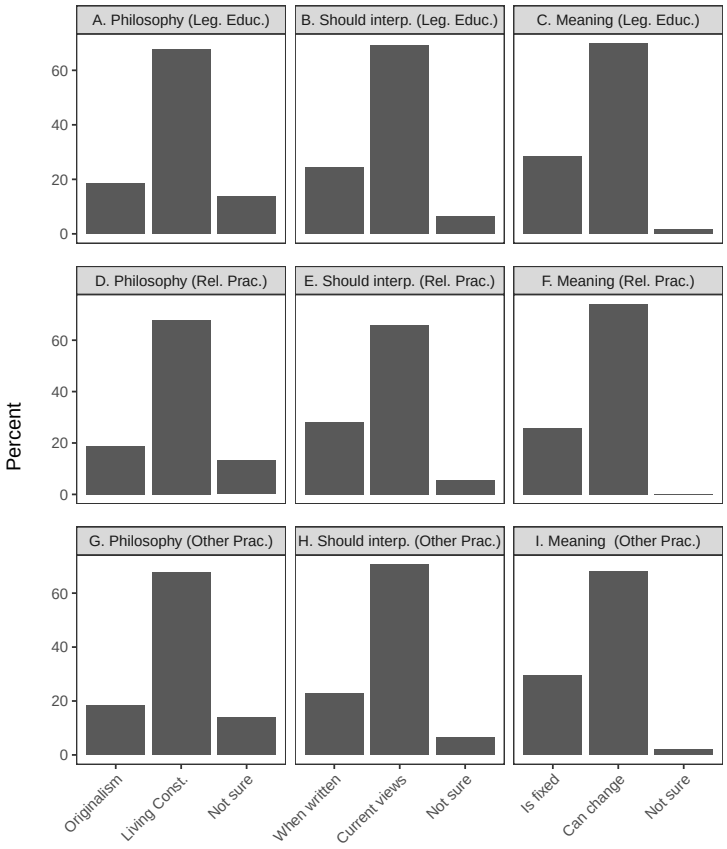


Figure A4: Barchart of responses to three items tapping support for judicial philosophy. "Leg. Educ." legal professionals in the Prolific sample that have some form of legal education or experience, "Rel. Prac." refers to legal professionals that work(ed) in the areas of constitutional law, criminal defense, government or military, or as a prosecutor, and "Other Prac." is all other legal professionals.

Table A3: Consistency of preferences regarding judicial philosophy, among those who did not answer "not sure" to any of the items.

| **Philosophy** | **Fully Incongruent** | **Partially (In)Congruent** | **Fully Congruent** |
|---|---|---|---|
| *Legal Education Professionals* | | | |
| Originalism | 0.64 | 5.80 | 14.74 |
| Living Constitutionalism | 3.85 | 10.26 | 64.74 |
| Overall | 4.49 | 16.06 | 79.48 |
| *Related Practice Area* | | | |
| Originalism | 0.00 | 20.00 | 15.56 |
| Living Constitutionalism | 4.44 | 8.89 | 63.96 |
| Overall | 4.44 | 28.89 | 79.52 |
| *Other Practice Area* | | | |
| Originalism | 0.90 | 6.36 | 14.41 |
| Living Constitutionalism | 3.60 | 10.81 | 63.96 |
| Overall | 3.69 | 17.17 | 78.37 |

Cell entries are percentages.

## H Horizontal Constraint with First Amendment Item

In the main text, we choose to omit the First Amendment item from our calculation of horizontal constraint. This was a model-driven choice; Table A4 displays the results of a 2-parameter logisitic IRT model, where we observe insignificant discrimination and difficulty parameters for the First Amendment item.

| **Amendment** | | **Coefficient** | **Std. Err.** |
|---|---|---|---|
| First | Discrimination | 0.17 | 0.13 |
| | Difficulty | -6.60 | 4.79 |
| Fourth | Discrimination | 1.28 | 0.22 |
| | Difficulty | 1.02 | 0.13 |
| Miranda | Discrimination | 2.50 | 0.60 |
| | Difficulty | 1.68 | 0.16 |
| Second | Discrimination | -0.28 | 0.11 |
| | Difficulty | -0.67 | 0.35 |
| Sixth | Discrimination | 1.58 | 0.28 |
| | Difficulty | 1.42 | 0.15 |

Table A4: 2-parameter logistic IRT results.

To ensure that our results are robust to the inclusion of this item, we re-estimate horizontal constraint while including all 5 items. Figure A5 shows the densities while including this item. Our substantive conclusions are unchanged; the masses still have both relatively and absolutely low levels of constraint, and legal professionals possess greater constraint. Finally, the Pearson product-moment correlation between the two measures of horizontal constraint is 0.73, which is significant at the $p \leq 0.05$ level.

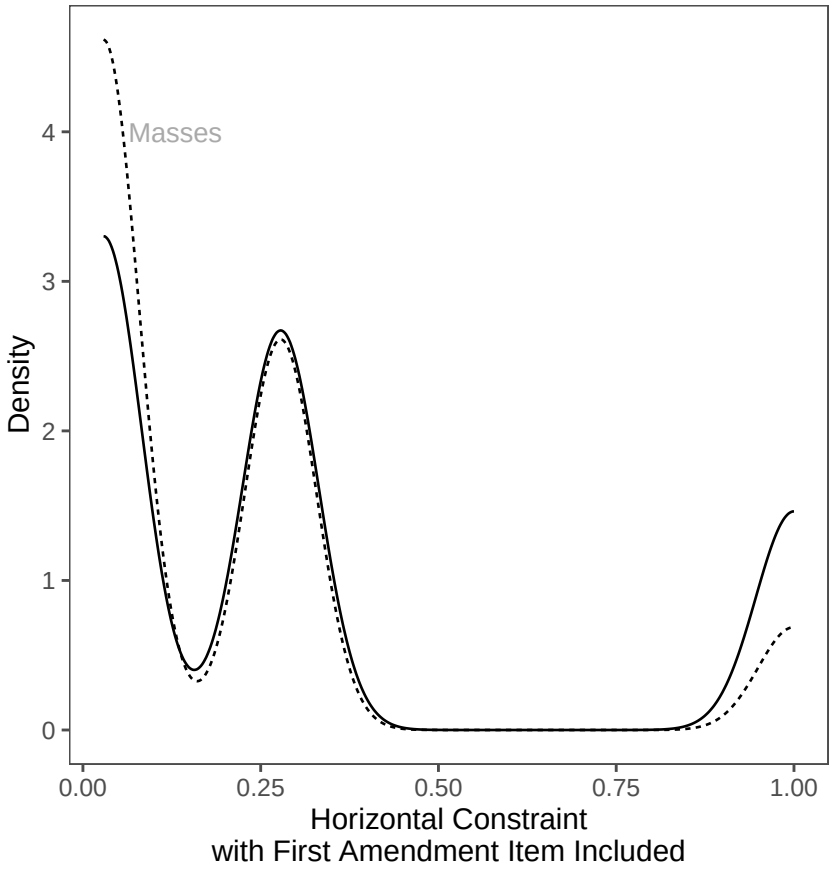


Figure A5: Horizontal constraint while including First Amendment item.

# I Full Logistic Regression Results

Here we present full model estimates for the "not sure" responses to the three philosophy items. Sophistication is predicted from the first principal component following a PCA of ideological constraint, knowledge (whether the respondent could identify the majority party in the House of Representatives), and education. Partisanship and ideology are measured on a typical seven-point scales.

Table A5: Logistic regression of "not sure" responses for judicial philosophy item onto sophistication and controls.

| **Variable** | **Coefficient** | **(Std. Err.)** |
|---|---|---|
| Sophistication | -2.605 | (0.474) |
| Partisanship | -0.009 | (0.065) |
| Ideology | -0.047 | (0.074) |
| Male | -1.017 | (0.185) |
| Race (white is reference): | | |
| Black | 0.800 | (0.332) |
| Asian | 0.429 | (0.613) |
| Mixed | -0.105 | (0.519) |
| Other | 0.433 | (0.294) |
| Constant | 1.744 | (0.441) |
| $n$ | 621 | |

* indicates $p \leq 0.05$ on two-tailed test.

Table A6: Logistic regression of "not sure" responses for "should interpret" item onto sophistication and controls.

| **Variable** | **Coefficient** | **(Std. Err.)** |
|---|---|---|
| Sophistication | -1.768 | (0.594) |
| Partisanship | 0.122 | (0.081) |
| Ideology | -0.124 | (0.091) |
| Male | -0.627 | (0.258) |
| Race (white is reference): | | |
| Black | 1.294 | (0.362) |
| Asian | 0.828 | (0.698) |
| Mixed | -0.836 | (1.041) |
| Other | 0.167 | (0.400) |
| Constant | -0.613 | (0.552) |
| $n$ | 621 | |

* indicates $p \leq 0.05$ on two-tailed test.

Table A7: Logistic regression of "not sure" responses for "meaning" item onto sophistication and controls.

| **Variable** | **Coefficient** | **(Std. Err.)** |
|---|---|---|
| Sophistication | -1.716 | (0.587) |
| Partisanship | 0.015 | (0.080) |
| Ideology | -0.085 | (0.092) |
| Male | -0.828 | (0.261) |
| Race (white is reference): | | |
| Black | 0.542 | (0.385) |
| Asian | 0.671 | (0.692) |
| Mixed | 0.283 | (0.650) |
| Other | 0.039 | (0.397) |
| Constant | -0.213 | (0.545) |
| $n$ | 621 | |

* indicates $p \leq 0.05$ on two-tailed test.

# J Full Results for Vertical Constraint Regression

Table A8: OLS regression of vertical constraint onto education and controls.

| **Variable** | **Coefficient** | **(Std. Err.)** |
|---|---|---|
| Education (reference is no HS): | | |
| HS Grad | -0.040 | (0.055) |
| Some College | 0.006 | (0.055) |
| 2-year College | -0.023 | (0.058) |
| 4-year College | 0.021 | (0.055) |
| Post-grad (non-law) | 0.038 | (0.057) |
| Paralegal/Assistant | 0.221* | (0.107) |
| Lawyer+ | 0.246* | (0.106) |
| Partisanship | -0.018* | (0.005) |
| Partisan Strength | 0.001 | (0.008) |
| Self-Identified Ideology | -0.006 | (0.006) |
| Ideological Strength | 0.013* | (0.008) |
| Legal Elite Sample | 0.067 | (0.091) |
| Age | 0.000 | (0.000) |
| Female | -0.034* | (0.014) |
| Race (reference is white): | | |
| Black | -0.072* | (0.025) |
| Asian | 0.017 | (0.042) |
| Mixed | 0.024 | (0.034) |
| Other | -0.011 | (0.026) |
| Intercept | 0.401 | (0.109) |
| $n$ | 990 | |
| $R^2$ | 0.180 | |

* indicates $p \leq 0.05$ on two-tailed test.

# K Ethical Declaration

## *K.1 Conflict of Interest*

There are no conflicts of interest to report.

## *K.2 Research Involving Human and Animal Rights*

In this manuscript, we adhere to ethical principles in social science. This research uses human participants, who provided informed consent and were debriefed at the end of the survey. Our survey participants were paid by Prolific, which does not reveal to researchers how much is given to each participant. This research did not benefit or harm particular groups, and vulnerable populations were not sampled.

# L CES IRB

This research has been deemed ethical under the U.S. federal IRB regulations, however, this approval was granted post-hoc. Here, we explain why we received post-hoc approval.

Our study relies on Team Content included as part of the Cooperative Election study (CES, formerly known as the CCES—Cooperative Congressional Election Study). The CES is a 50,000+ person national stratified sample survey administered by YouGov. It is a cooperative effort between the principal investigators at Harvard and Tufts and teams of researchers at different institutions across the country. Half of the questionnaire consists of Common Content asked of all 50,000+ people, and half of the questionnaire consists of Team Content (sometimes called team "modules") designed by each individual participating team and asked of a subset of 1,000 people.

The Common Content was determined to be exempt by the Harvard IRB, but the Team Content we use for this study did not receive its own separate IRB approval from the hosting institution due to institutional error. While we did obtain post-hoc approval, the content we rely on did not undergo review before the research was conducted. Below is the most pertinent information we provided to our IRB to obtain post-hoc review.

1. Who were the human subject participants in the research? Were vulnerable populations recruited (e.g., children, prisoners, pregnant women, victims of violence, etc.)?

   Our sample consists of 1000 respondents who took an online survey fielded by YouGov as part of a module included in the 2022 CES. The respondents are all adults living in the United States. No participants of age 18 or older were excluded from the study. The survey was administered by YouGov to a sample of adult respondents whose characteristics mirror those of the general population.

   No vulnerable populations were involved in this research.

2. How were the subjects recruited? If you provided compensation or there were other benefits from participation, was the opportunity to participate made available fairly?

   Participants in the study are part of YouGov's panel of survey participants (or panelists recruited from other survey vendors) and have given consent to participate in YouGov surveys. All recruitment occurs through YouGov, who communicates directly with their panelists by alerting them that a new survey is available for completion. We did not contact the panelists directly or recruit in any way outside of the YouGov process.

   The opportunity to participate is determined by YouGov's sampling frame. YouGov interviews a sample of slightly more than 1,000 respondents in order to guarantee that we have at least 1,000 completed survey responses after the matching process. The

respondents are matched to a sampling frame on gender, age, race, education, marital status, party identification, ideology, and political interest.

3. How were the subjects compensated, if at all?

   Respondents are part of YouGov's panel of survey respondents and have already agreed to respond to YouGov invitations. To incentivize survey participation, YouGov provides "points" to respondents for completing surveys. These "points" can eventually be exchanged for gift cards. No other compensation was provided to individuals who completed our survey. YouGov handles all aspects of the compensation, and the researchers are not directly involved in any way.

4. Did subjects participate voluntarily? E.g., did students feel obligated to participate by a professor in a course, or employees by their employer?

   Subjects participated voluntarily. We minimized the possibility of coercion or undue influence by never interacting directly with the research participants. Instead, YouGov presented potential participants with the opportunity to participate, and they were free to refuse to participate or to opt out at any point.

5. What are the risks posed to human subjects from participating in the research? It is expected that most research poses minimal risk, meaning there is little chance of upset, distress, physical harm, or discomfort greater than would be encountered in daily life. This minimal risk category includes benign behavioral interventions ("brief" in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing").

   The study involves no more than minimal risk to the subjects. The study involves only responding to survey questions about social and political issues. We do not expect any of the survey items to provoke anxiety or concern beyond the level someone would experience in everyday life when discussing contemporary political and social issues. Members of the YouGov panel respond to these sorts of questions frequently and have opted in to the panel knowing that they will be asked a variety of different types of survey questions. We never received a complaint or a concern from any participant.

6. What are the risks posed to human subjects from accidental disclosure of original data? Is the original data fully anonymous, or, is it possible to identify subjects from the original data? Beware that combinations of multiple demographic categories, IP addresses, IDs from websites such as MTurk, etc., can all be considered identifiable. If the original data is identifiable or potentially identifiable, what risks to subjects would accidental disclosure of the data pose, and what security steps have been taken to limit the risk of accidental disclosure? For example, do the original data contain sensitive personal information (e.g., identity card numbers) or data which could put the subjects at risk of embarrassment or civil or criminal liability?

   We did not gather personal identifiers. Data is stored in the cloud and in a shared file with limited access to research personnel only. A public version of the dataset containing no individually identifiable information will be posted online for other researchers

and for public use. These archived datasets will be stored indefinitely. None of these datasets includes the identities of the respondents, which we as researchers also do not know. What we receive from YouGov is already de-identified. While some geographic markers are part of the dataset (state and congressional district, for example), the researchers will not know the precise location where respondents will complete the survey.

The survey questions do not ask about illegal or stigmatized, emotionally sensitive behavior. A breach of privacy or confidentiality would not result in any significant consequences for research subjects. The study does not collect information that state or federal law require to be reported to other officials.

7. Was informed consent obtained from research participants, and if so, how? Note that informed consent is not necessarily required for minimal risk studies if not obtaining consent does not adversely affect the welfare or rights of subjects, if it is impractical to obtain consent, and if debriefing subjects would not be appropriate.

   We obtained informed consent from research participants. YouGov presented the consent form as the first screen of the survey. Participants indicated consent by answering the survey question at the end of the consent form: Do you agree to participate in the study? (Yes/No). We assessed consent by the response to the survey question. The consent form includes an email address where participants can contact YouGov to answer questions about the study.

8. Did the research take place in a country which requires government ethics review of human subjects research, and if so was such an approval obtained?

   We created the team content such that it would be deemed ethical under the U.S. federal IRB regulations. The online study took place within the United States.