Introduction
Scholars of the judiciary devote considerable attention to the public’s views over the proper behavior of judicial actors. Recent research finds that an important determinant of an individual’s support for the Court is the perception that judges are “different from ordinary politicians, in part because... they are principled in their decision-making” (Gibson and Caldeira, 2011). Yet existing research on public attitudes toward judicial behavior tells us little about what type of legal principles judges want and expects judges to employ when making decisions. In this paper, we explore whether the American public holds preferences over the legal philosophies judges employ when making their decisions in cases involving constitutional principles.

Previous Research and Theoretical Expectations
Public Attitudes and Principles of Judging
The courts care a great deal about their legitimacy in the eyes of the public, which depends in large part on how the public understands how they behave (Dahl, 1959; Epstein and Knight, 1998).

Existing research suggests that the American public views judges as “different from ordinary politicians, in part because... they are principled in their decision-making” (Gibson and Caldeira, 2011). We expect that the American public thus holds preferences over the legal principles judges apply when making their decisions.

We also expect these preferences to shape individuals’ attitudes toward judicial behavior and judicial institutions, much in the same way that they do for judges and other political elites.

What Legal Principles Might the Public Care About?
In particular, we expect that the public thinks about the principles of judging in the same way that judges, elected officials and the media talk about these principles.

A primary axis of division in judicial philosophy centers on how many factors judges should consider when deciding cases.

In particular, some judges (Bork, 1971; Scalia, 1997) argue that judges should decide cases using legal principles ("originalism") while others (Breyer, 2005; Liu, Karlan and Schroeder, 2010) argue for consideration of a wide variety of factors ("pragmatism.")

We thus expect Americans to hold views over judicial philosophy that fall along this dimension.

Data and Methods
To investigate the public’s preferences over the legal principles and philosophies that judges employ when ruling on cases, we included a module of questions in the October 2017 Harvard/Harris Poll.

The Survey
Monthly nationally-representative survey of 2,305 respondents (opt-in, weighted to a target sampling frame).

Administered soon after the start of the Court’s term (October 14-18) and assessed Americans’ attitudes toward the judiciary, the Supreme Court and the cases the Court would hear in its upcoming term.

Measuring Attitudes on Principles of Judging
Prompt: “You will see a series of principles Supreme Court justices should use when deciding cases in the Court’s upcoming term. For each principle, please tell me whether you agree, strongly agree, or disagree.”

We then conducted an exploratory factor analysis on responses to these ten questions. Our results reveal one primary factor that explains a considerable proportion of the variation in our data, with potential second and third factors of interest. The eigenvalues for the first factor is 3.29, and the eigenvalues for the second and third factors are 1.46 and 0.92.

We identify the first factor as identifying respondents on an originalism–pragmatism dimension. The pragmatism factor has a clear interpretation as it correlates at 0.60 with the additive index of respondents’ answers to the ten individual questions. We thus interpret this factor as measuring whether respondents want the justices to consider a wide variety of factors or relatively few factors when making constitutional rulings.

Our Analyses
Descriptive
1. Do Americans hold preferences over how judges apply legal principles?

2. Are these preferences arranged in any discernible structure?

3. What explains the structure of Americans’ preferences over legal philosophy?

4. Are these preferences consequential for attitudes toward judges and the courts more broadly?

5. Preferences over Judicial Activism

Exploratory Results
We first explore the potential determinants of our pragmatism measure. Table 3 presents the results from a linear regression of our pragmatism factor on respondent party ID and ideology. We find that judicial pragmatism is associated with both party and ideology, but not particularly strongly. For example, a one-unit movement toward greater Republican identification (on a seven-point scale) is associated with only a 0.05-point decrease in pragmatism, which is one-twentieth of a standard deviation.

Conclusions
The American public holds structured attitudes toward how judges apply legal principles when making decisions.

These preferences are not purely a function of partisanship or ideology, and help explain attitudes toward individual justices and the activism of the Court.

Implications: Court legitimacy may hinge not only on the outcomes courts reach but also the ratifiers’ and judges’ decision-making processes.

Next steps: explore the linkages between these preferences, perceptions of how judges behave in specific cases and support for the Court.

Table 1: Principles of Judging

<table>
<thead>
<tr>
<th>Principle</th>
<th>Pragmatism</th>
<th>Factor 2</th>
<th>Factor 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plain meaning</td>
<td>0.14</td>
<td>0.58</td>
<td>0.25</td>
</tr>
<tr>
<td>Intent of framers</td>
<td>0.18</td>
<td>0.78</td>
<td>0.15</td>
</tr>
<tr>
<td>What most thought when adopted</td>
<td>0.25</td>
<td>0.69</td>
<td>0.06</td>
</tr>
<tr>
<td>State decision</td>
<td>0.19</td>
<td>0.52</td>
<td>0.16</td>
</tr>
<tr>
<td>Strong reason (e.g., national security)</td>
<td>0.10</td>
<td>0.22</td>
<td>0.73</td>
</tr>
<tr>
<td>Political activity</td>
<td>0.59</td>
<td>0.17</td>
<td>0.37</td>
</tr>
<tr>
<td>State or federal</td>
<td>0.02</td>
<td>0.16</td>
<td>0.79</td>
</tr>
<tr>
<td>Consequences</td>
<td>21.42</td>
<td>0.18</td>
<td>0.55</td>
</tr>
<tr>
<td>Other countries</td>
<td>0.84</td>
<td>0.05</td>
<td>0.00</td>
</tr>
<tr>
<td>Public opinion</td>
<td>0.83</td>
<td>0.13</td>
<td>0.10</td>
</tr>
</tbody>
</table>

Figure 1: Distribution of Respondents’ Views on Principles of Judging

Figure 2: Pragmatism and Favorability of Supreme Court Justices

Table 2: Factor Loadings on Philosophy Questions

Table 3: Predictors of Judicial Pragmatism

Conclusions
- The American public holds structured attitudes toward how judges apply legal principles when making decisions.

- These preferences are not purely a function of partisanship or ideology, and help explain attitudes toward individual justices and the activism of the Court.

- Implications: Court legitimacy may hinge not only on the outcomes courts reach but also the ratifiers’ and judges’ decision-making processes.

- Next steps: explore the linkages between these preferences, perceptions of how judges behave in specific cases and support for the Court.