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## **Supreme redux: restoring the foundational role of the United States Supreme Court**

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## Summary

*Supreme Redux* offers a critical examination of the workings and current ‘‘legitimacy crisis’’ of the United States Supreme Court amidst growing criticism. It investigates the legitimacy crisis that appears to be exacerbated by factors such as the rise of perceptions of partisanship, controversial decisions, and ethical controversies. The purpose of the study is to comprehensively analyze the fundamental principles and procedures of the Supreme Court as a foundation for potential internal reforms, with an emphasis on integrity as a crucial factor in maintaining public trust and ensuring compliance with judicial rulings. The central question is to what extent the Supreme Court of the United States can enhance and sustain its legitimacy through internal procedural reforms, amidst contemporary challenges such as contentious rulings, evolving societal values, and historically low public confidence.

The first chapter outlines the origins of the Supreme Court and discusses the debates between the *Federalist Papers* and the anti-federalist critiques, particularly by ‘Brutus,’ regarding judicial independence and authority. The historical debate remains highly relevant to contemporary discourse regarding the Court. While Hamilton described the judiciary as the ‘‘least dangerous branch,’’ Brutus expressed concerns about the amount of judicial power, fearing that judges would accumulate excessive power and become susceptible to political influence - an issue often attributed to the current Supreme Court. Various theories of legitimacy and procedural justice are outlined to illustrate that the Court is, in a way, dependent on public perception and voluntary compliance. It is demonstrated that the decline in public trust in the Supreme Court is, however, historically low, also framing the debate on how the preservation of fundamental principles can influence the perception of legitimacy. The abandonment of certain fundamental principles, such as the doctrine of stare decisis, and the perception that the Court often fails to ‘act like a court,’ contribute to the conclusion that the Court is experiencing a legitimacy crisis, though this does not necessarily imply a loss of legitimacy.

Chapter two delves into the potential impairments of the Court’s legitimacy. It critically examines the confirmation of Supreme Court Justices where the stakes were high, the rise of the shadow docket, and the discretionary powers of the Court. These factors all contribute to the public perception of political influence or ‘imperialization’ and have the potential to further undermine trust. An analysis of several major cases reveals how these practices can affect the transparency and accountability of the Court and may fuel allegations of judicial overreach in the United States. Although these erosions are not immediately problematic, they hold the potential to become problematic in the future.

Chapter three explores how well-known perspectives on law and judicial decision-making in the United States might have shaped the understanding of judicial discretion. It highlights the tension between judicial review and the counter-majoritarian difficulty, in which the Court is often required to make decisions contrary to the will of the democratic majority. The debate between H.L.A. Hart and Ronald Dworkin is essential, raising the fundamental question of whether law is merely a system of rules, or if judges may draw upon moral and social principles to make decisions that are both legally correct and just. Emphasis is placed on the importance of a deeper discussion of judicial philosophies, which play a central role in the debate over legitimizing decision of the Court. These philosophies shape the interpretative

freedom of the judiciary and are pivotal in discussions regarding the Court's role and the extent of discretion that judges should possess.

Chapter four further examines the role of judicial philosophies in the public perception of the legitimacy of the Supreme Court. The public appears to value the use of judicial philosophies, as they provide insight into the decision-making process of judges. Consistent use of a judicial philosophy contributes to a more positive perception of a well-functioning judiciary, while inconsistencies or ambiguities lead to significant criticism. It is argued that no single philosophy provides an all-encompassing framework for judicial decisions, due to the open-ended nature of the Constitution and the discretionary power of the Court. A mixture of different philosophies appears necessary to address the complexity of legal issues. The use of multiple philosophies can assist the Court in making more transparent, consistent, and understandable decisions, which is essential for maintaining legitimate authority, provided that the use is transparent and well-motivated.

Chapter five evaluates current (congressional) reform proposals for the Supreme Court, such as expanding the number of justices (court-packing), term limits, and implementing a code of conduct. While some reforms may alleviate certain criticisms, they also bring risks, such as further politicization of the Court and undermining its independence. This chapter advocates for a more balanced approach that does not jeopardize judicial integrity and independence. Reforms should focus on genuine improvements, not on increasing political influence over an independent institution.

The final chapter argues that the debate should shift from external reforms to internal reforms, contending that procedural improvements, such as increased transparency and stricter withdrawal rules, would be more effective in restoring legitimacy. By using Stephen Carter's integrity framework, the chapter emphasizes the essential value of judicial integrity, self-reflection, and adherence to fundamental judicial principles as the basis for public trust.

*Supreme Redux* argues that the focus of the debate surrounding the Supreme Court should shift. While current emphasis is placed on political intervention and swift, significant changes, emphasizing judicial integrity, transparency, and accountability offers a more sustainable path to restoring public trust and maintaining the Court's fundamental role. External reforms, if necessary, should only be considered after internal improvements have been implemented and adhered to, to minimize the potential increase in public perceptions of a dependent, or partisan judiciary.