The Legitimacy of the Federal Reserve

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Abstract

In the past several years, the Federal Reserve—America's central bank—has considered expanding its authority into areas not typically within a central bank's domain, such as climate change, inequality, and diversity. For some of this time, the Federal Reserve has struggled to control inflation. The Fed's simultaneous expansion into new areas of social and economic life without congressional approval, and rising price levels, puts the Fed's legitimacy into question.

Damage to the Fed's legitimacy could invite legal reform: by congressional efforts to revisit its legal mandates or a Supreme Court in search of evidence to rein in the administrative state. Yet to date, the conditions of the Fed's legitimacy remain relatively understudied, obfuscating the best way forward for the Fed to maintain its credibility.

This Article combines law and macroeconomics methodologies to derive the legal and democratic aspects of the Fed's legitimacy in contemporary times. Our survey of 1603 American citizens in 2021 and 2022 reveals that the general public prefers the Fed to focus on inflation and interpret its mandates more narrowly. In view of these results, the Article urges the Fed to use restraint when exercising the discretion in the interstices of its legal mandates.

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Introduction

Today, the legitimacy of the central bank—the U.S. Federal Reserve—is under strain.[2] In part, the public has become disillusioned over inflation.[3] At the same time, the public—as well as Congress—observed the Fed moving increasingly, over the past few years, into political rather than technocratic areas.[4] The people have grown weary of politicized institutions and the Fed is no exception.[5] Yet the Fed is too valuable to economic and financial stability to have its credibility undermined by veering off its track. This Article aims to help the Fed restore its legitimacy by offering a new interpretation of the democratic aspects of its legitimacy, using data from a survey we conducted in 2021 and 2022. Given that data, the Article recommends limits on the Fed's exercise of statutory authority—restraint in the interpretation of its own mandates—even absent formal congressional narrowing.[6]

This is not the first time an American central banking institution has struggled with its legitimacy. In 1832, President Andrew Jackson declared that the Second Bank of the United States—America's early attempt at a central bank—possessed "powers and privileges . . . unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people."[7] With those words, Andrew Jackson vetoed Congress's renewal of the Second Bank's charter, leaving America to

2. See, e.g., Michael S. Derby, Some Fed Officials Face Heat for Wading Into Hot-Button Issues, Wall St. J. (May 19, 2022), https://perma.cc/YJQ2-298Q (quoting Binder & Skinner, topics of race, gender and climate are "harder to connect to the central banks' core mission of controlling inflation and generating job growth"); Nick Timiraos, Senate Confirms Jerome Powell to Second Term Leading Federal Reserve, Wall St. J. (May 12, 2022), https://perma.cc/DBF7-SKSQ (noting that the Fed must restore its credibility by understanding why they were wrong about inflation); Charles D. Eden, Letter, The Fed Needs to Take Off Its Core Inflation Blinders, Wall St. J. (June 8, 2022), https://perma.cc/RR5B-E24T (remarking the "Federal Reserve is now knee-deep in the murky waters of climate change, energy policy and sustainability"); Opinion, Ed. Board, Learning to Believe the Fed, Wall St. J. (Apr. 22, 2022), https://perma.cc/A9CC-HA7N (noting markets did not believe the Fed would follow through on its promise to stop bond purchases in order to control inflation); Opinion, Ed. Bd. Powell Puts Volcker on Hold, Wall St. J. (May 4, 2022), https://perma.cc/LJ7J-8JWR (noting the Fed has changed the explanation for inflation numerous times).
3. CPI inflation increased 9.1% in June, and is now at a forty-year high. U.S. Bureau of Lab. Stats., U.D. Dep't of Lab., Consumer Prices Up 9.1 Percent Over the Year Ended June 2022, Largest Increase in 40 Years, Econ. Daily (July 18, 2022), https://perma.cc/K8AQ-Z48J.
4. See, e.g., Derby, supra note 2; James Freeman, Opinion, Fed Official Does Politics While Inflation Soars, Wall St. J. (Apr. 12, 2022), https://perma.cc/UD87-FBC8.
5. A recent Gallup poll reveals that "Americans are less confident in major U.S. institutions than they were a year ago, with significant declines for 11 of the 16 institutions tested and no improvements for any . . ." Jeffrey M. Jones, Confidence in U.S. Institutions Down; Average at New Low, Gallup (July 5, 2022), https://perma.cc/3FAF-FZMD.
6. Indeed, it may well be time for all agencies to revise the scope of their self-proclaimed authority, see Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984), as a matter of self-preservation. See West Virginia v. E.P.A., slip op. No 20-1530 (decided June 30, 2022) (using the "major questions doctrine" to cabin the rulemaking authority of the EPA).
7. Andrew Jackson, President of the United States of America, The Veto Message from the President of the United States Returning the Bank Bill with His Objections (July 10, 1832), https://perma.cc/XW99-JD3R.

muddle through the next seventy-seven years without a central bank.[8]

Fundamentally, Jackson's veto revealed a problem with the Second Bank's *legitimacy.* The Supreme Court had long before decided that the Bank was lawful insofar as Congress had the constitutional power to issue its charter in 1806.[9] But that Court ruling was not enough to win Jackson and his adherents to the cause. For Jackson, the dispositive question was whether the Bank's exercise of "monopoly" power over money and dispensation of "the Special favor of the Government" was an authority America should accept.[10]

America's skepticism toward concentrating federal power over money (and the banking system generally) did not go away. Years later, when the nation was finally ready to establish a central bank, similar debates swirled around the power of what would become the Federal Reserve ("the Fed"). For some, the Federal Reserve Act would create "an invisible government by the money power."[11] But the political and legal stance toward central banking shifted in 1935, as the economic suffering of the Great Depression hung heavily in the air. By then, the mood in Congress favored a more empowered central bank.[12] Still, detractors that favored localized power, and regional interests voiced these age-old concerns about the "concentration of power in the hands of a small group."[13]

Today, again, scholars and politicians rigorously debate the fundamental purpose and role of America's central bank.[14] On one side of this debate are those that believe a leading central bank, like the Fed, should move in anticipation of a wide range of

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8. Tim Todd, The Balance of Power: The Political Fight for An Independent Central Bank, 1970—Present, Fed. Rsrv. Bank of Kansas City (June 2012), https://perma.cc/LY82-AVQ2.

9. The fundamental question concerning the Second Bank was a constitutional one, and thus provided the Supreme Court's first opportunity to decide whether it had the power to determine whether acts of Congress were unconstitutional. Marbury v. Madison, 5 U.S. 137 (1803).

10. Jackson, supra note 7. There is a vast political science literature equating legitimacy with authority. See, e.g., James L. Gibson & Gregory A. Caldeira, Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People 36, 38 (2009).

11. Roger Lowenstein, The Federal Reserve's Framers Would Be Shocked, N.Y. Times (June 22, 2013), https://perma.cc/5H7M-4LTL.

12. In hearings about the Banking Act of 1935, which expanded the Fed's power and consolidated control at the centralized Board, it was viewed as "a great forward step toward modernization and rationalization of our monetary system." Banking Act of 1935: Hearings on S. 1715 and H.R. 7617 Before the S. Subcommittee of the Comm. on Banking and Currency, 74th Cong. 930 (1935) (statement of J. David Stern, Ed., Phila. Rec.). Political control over credit was, on that view, preferable to private control.

13. Banking Act of 1935: Hearings on S. 1715 and H.R. 7617 Before the S. Subcommittee of the Comm. on Banking and Currency, 74th Cong. 830 (1935) (statement of L.M. Wiggins, President, Bank of Hartsville, S.C.).

14. Compare Christina Parajon Skinner, Central Bank Activism, 71 Duke L.J. 247, 290-21 (2021) (arguing that most climate initiatives are outside the Fed's statutory mandates), with Todd Phillips, Opinion, The Fed Has a Clear Mandate to Mitigate Climate Risks, The Hill (Jan. 22, 2022), https://perma.cc/WN4Y-FBLD (arguing that climate change mitigation falls squarely in the Fed's financial stability responsibility in executing its dual mandates).

economic challenges on the horizon.[15] In doing so, these scholars favor a central bank's discretion to evolve—that is, expand—its role to meet a host of new challenges.[16] Proponents of this view believe the Fed should act at the very limits of the authority Congress has delegated to it under the Federal Reserve Act; and in some cases, should push those limits to address new economic problems like climate change and inequality.[17] Today, the notion that technocrats should lead the way in social-planning problems has gained popular traction.[18]

On the other side of this debate are those that urge a more restrained reading of the Federal Reserve Act, limited to the Fed's core monetary, regulatory, and supervisory roles. The crux of this position is the preservation of the Founders' vision of a separation of power between the Executive and Legislative branches and, accordingly, adherence to the longstanding canon of central bank independence and limits on *Chevron*-style deference.[19] There are also practical questions about whether central banks can "do it all." Accordingly, these scholars, while mindful of the challenges that issues like climate change and inequality present, would prefer them addressed by elected officials in the Executive branch—not, in the first instance, the monetary authority of a central bank, which exercises Article I power delegated from the Legislative Branch.[20] But underpinning both debates is a question of legitimacy.

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15. See Phillips, supra note 14.
16. Andy Haldane, Chief Economist, Bank of Eng., Thirty years of hurt, never stopped me dreaming, Speech at the Inst. for Gov't (2021), https://perma.cc/K4N4-NPD5 (asserting that central banks should "skate to where the puck is"); see Peter Conti-Brown & David A. Wishnick, Technocratic Pragmatism, Bureaucratic Expertise, and the Federal Reserve, 130 Yale L.J. 546 (2021).
17. Conti-Brown & Wishnick, supra note 16, at 639 ("Fed should not fear acting at the outer edge of its statutory authority and should not blanch at recognizing an absence of—and thus a need for—relevant expertise." Rather, "it should experiment energetically . . . to address complex, emergent problems that affect the Fed's broad statutory missions.").
18. Carola Binder, Technopopulism and Central Banks (Cato Cntr. For Monetary and Financial Alternatives, Working Paper No. 004, 2021), https://perma.cc/88PH-PJ6Q; see also Bed Seyd et al., Decision Responsiveness and the Legitimacy of Public Agencies, 10 Parliamentary Affs. 1 (2021) (suggesting that public agencies, acting on expertise, may know better than citizens themselves about the long-term interests of the public).
19. So-called Chevron deference refers to the eponymous doctrine establishing a framework for judicial deference to agency interpretation of their congressional mandate, in instances where the mandate is vague. Chevron v. Nat. Res. Def. Council, 467 U.S. 837 (1984). See Skinner, supra note 14, at 257-58 (elevating rule of law concerns in the conversation over central banking mandate expansion); see also Alexander William Salter, Daniel J. Smith & Peter Boettke, Money and the Rule of Law: Generality and Predictability in Monetary Institutions (2021) (arguing that the discretion afforded to central banks is contrary to fundamental principles of the rule of law).
20. Compare John Cochrane, Testimony to Senate Banking Comm., Mar. 2021 ("A central bank in a democracy is not an all-purpose do-good agency, with authority to subsidize what it decides to be worthy, defund what it dislikes, and force banks and companies to do the same. A central bank, whose leaders do not regularly face voters, lives by an iron contract: freedom and independence so long as it stays within its limited and mandated powers."); Paul Tucker, Unelected Power: The Quest for Legitimacy in Central Banking and the Regulatory State (2020) (arguing that "central banks should not venture into major choices on the distribution of wealth on society's values"); with Conti-Brown & Wishnick, supra note 16, at 641 (asserting "the need for the Fed to develop expertise to

What can and should America's central bank do?

The Fed is not a democratic institution. Congress delegates significant power to the Fed to affect the value and supply of money,[21] which, when exercised, influences consumption, investment, and the labor market through a variety of channels.[22] The Fed also has the power to react to economic shocks (like Covid or a drop in home prices) by supporting banks and financial markets, thereby assisting the "real" economy to weather those unexpected storms.[23] Thanks to its composite powers and its expanding interpretation of them, the Fed is today one of the most powerful, influential, and discretion-laden institutions, spurring quips like "in Fed we trust" and references to the "republic of the central banker" and our modern "Fed State."[24]

Yet Fed leaders and key decision makers are not elected and therefore not directly accountable to the public. Nor are their actions and decisions circumscribed (much) by judicial review or political checks and balances. Fed-related questions are seldom justiciable; questions of monetary policy almost always evade standing. Where political accountability is concerned, unlike other agencies, the President has effectively no formal power to control the Fed.[25]

It is true that other important institutions—like the Supreme Court of the United States and other administrative agencies—share these democratic deficits. Yet precisely for those reasons, they frequently suffer "crises" of legitimacy—particularly when they go into expansion mode. The Supreme Court has been subject to intense criticism when perceived to be engaged in "activist" jurisprudence,[26] while the

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attack complex problems adjacent to its core statutory responsibilities and . . . select the values and problems that deserve the Fed's scare resources to combat").

21. Congress created the Federal Reserve to delegate its power to "coin money and regulate the value thereof." U.S. Const., art. I, § 8, cl. 5.

22. 12 U.S.C. § 225a (giving the Fed a mandate for price stability and maximum employment); 12 U.S.C. § 353 (authorizing the Fed to buy and sell certain kinds of securities in the open market).

23. 12 U.S.C. § 347b(a), 12 U.S.C. § 342 (giving the Fed the power to lend to banks through its discount window, and to rescue nonbanks financial institutions, respectively); CARES Act, H.R. 748, 116th Cong. § 1102(D)(i) (2020) (authorizing the Fed to lend to small businesses in the real economy).

24. Lawrence R. Jacobs & Desmond King, Fed Power: How Finance Wins (2021); David Wessel, In Fed We Trust: Ben Bernanke's War on the Great Panic (2009). See also Sarah Binder & Mark Spindel, The Myth of Fed Independence: How Congress Governs The Federal Reserve (2017) ("By the end of its first century, the Federal Reserve had become the crucial player sustaining the steering the nation's and, to a large extent, the world's economic and financial well-being . . . .").

25. Technically, removal power—but never used and no one knows what would fall under the for-clause restriction on removal. 12 U.S.C. § 242 ("[E]ach member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President."). See Does the President Have Legal Authority to Fire the Fed Chair?, PBS News Hour (Dec. 25, 2018), https://perma.cc/3E3F-WZZG ("No president has ever tried to remove a member of the Federal Reserve's board, let alone a chairman, for any reason at any time."); Henry B. Hogue et al., Cong. Rsch. Serv., R43391, Independence of Federal Financial Regulators: Structure, Funding, and Other Issues 16 (2017) ("[F]or cause does not have a precise meaning [as it applies to financial regulators], but it is understood to include factors such as malfeasance or neglect of duty.").

26. See, e.g., Gillian E. Metzger, 1930s Redux, The Administrative State Under Siege, 131

administrative state, more broadly, is routinely maligned as a "headless fourth branch of government."[27]

There may be little reason to think the Fed would fare better on its legitimacy score if it were to aggrandize its role. For one, the Fed's legitimacy may already be stretched by recent actions and policies to combat the 2008 global financial crisis and the 2020 Covid pandemic. Interventions during and after the financial crisis generated blustery calls to "audit the Fed," meaning, to impose greater congressional oversight over the Fed's emergency lending decisions.[28] This popular dissatisfaction relates, it would seem, specifically to the Fed's crisis-fighting role.[29] But that function is at least core to the Fed's legal and historic role. Tackling issues farther afield from its core and historic functions might push the public to greater levels of unhappiness or confusion.

Importantly, the kernel of public dissatisfaction regards not only the Fed's departure from its historic role but also from its *technocratic* one. In exchange for broadly worded mandates and light-touch oversight from other branches, the Fed is meant to exercise power based on its technical expertise, with little reliance on subjective value judgments. The Fed's rescue of AIG but not of Lehman Brothers in 2008, for instance, appeared to many as a subjective and political judgment rather than a technocratic one.[30] The use of unelected power to—"substitute[] personal preferences for the will of the people"—is precisely what irks the public when the Supreme Court and other agencies so step beyond their respective roles.[31]

This all suggests that each time the Fed seeks—or feels compelled—to expand its power, the Fed must re-examine whether such expansion will be accepted as legitimate. That is the gating question. Although legal authority is a condition of

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Harv. L. Rev. 1 (2017).

27. See Richard H. Fallon, Jr., Legitimacy and the Constitution, 118 Harv. L. Rev. 1787 (2005).
28. Id.
29. See Alexander Mehra, Legal Authority in Unusual and Exigent Circumstances: The Federal Reserve and the Financial Crisis, 13 U. Pa. J. Bus. L. 221, 261 (2010) (describing how the Fed's use of its emergency powers during the 2008 Financial Crisis likely exceeded the Fed's statutory mandate); id. at 272 (arguing that it may be helpful to move the Fed's current emergency unsecured lending powers under a different statutory authority to increase oversight). But see Neil H. Buchanan & Michael C. Dorf, Don't End or Audit the Fed: Central Bank Independence in an Age of Austerity, 201 Cornell L. Rev. 1, 43-44 (2016) (arguing that, in retrospect, the Fed did a better job managing the financial crisis than the politically controlled parts of the government, attributable in part to the Fed's independent authority to exercise its emergency powers).
30. Precisely to obviate this manner of subjectivity, which is contrary to the spirit of technocratic expertise, Congress revised the Fed's power to lend to nonbank companies to now require any such liquidity facility be offered in a broad-based way. See Todd H. Eveson, Exigent Circumstances: Section 13(3) of the Federal Reserve Act and Federal Emergency Lending Programs, 25 N.C. Bank. Inst. 103, 115 (2021) (discussing how a Dodd-Frank amendment of the Federal Reserve Act § 13(3) emergency lending facilities requires "broad-based eligibility" not to be limited to a small subset of financial institutions).
31. Frank B. Cross & Stefanie A. Lindquist, The Scientific Study of Judicial Activism, 91 Minnesota L. Rev. 1753-1756 (2007) (also finding that when "the Supreme Court . . . play[s] an affirmative role in promoting social welfare" this is almost always viewed negatively as "activist judges simply impose their policy preferences on society, without electoral accountability or fidelity to the Constitution").

legitimacy, it is often not sufficient—put another way, low legitimacy cannot be compensated for by piling on more (formal) legal power.[32] As this relates to the ongoing debate today, if a dynamic, "experimental" Fed is not both legally *and* socially legitimate, pressing the Fed into this kind of larger, much-expanded role may well be a futile endeavor.[33] The Fed's authority to fulfill these new obligations could very well be contested.

To shed light on the question of whether the Fed can expand into new areas *and* recover its legitimacy, the Article first scrutinizes in depth the legal and policy bases of the Fed's legitimacy—that is, the concrete laws and internal norms that the Fed relies on to sustain public support for its actions and decisions. We identify three categories of laws and internal norms that appear dispositive of Fed legitimacy today: *(i)* transparency and high-quality communication with households; *(ii)* elasticity of power (which levels up in crisis times but then returns to baseline); *(iii)* robust independence from Presidential pressure.

Building on that descriptive framework, the Article then describes an experiment conducted in 2021 and 2022 to test how these three conditions might hold up against a Fed that expands into new areas, like climate or inequality. Again, we are particularly interested in these areas because they are problems that, in addressing, would require the Fed to exercise the kind of subjective judgments and allocations that have typically been allocated to the more democratically responsive actors in the Legislative and Executive Branches. We will call this, for sake of brevity, "Fed expansion." One of us has elsewhere referred to this as Fed "activism."[34]

More specifically, our goal in conducting this survey experiment was to better understand three potential connections and correlations:

First, we were interested in people's knowledge about the Fed's mandate (i.e., Fed "law"). How much do people know about the current "job" of the Fed, and how its mandates set out its goals?

Second, we wanted to understand how people's confidence in the Fed has changed during a year of rising inflation, and how confidence influences beliefs about how far the Fed should go in addressing subjective rather than technocratic-focused issues.

Third, we sought information about people's education, demographics, and support for the President, to examine the associations of these characteristics with opinions about the role of the Fed.

We find that although Americans do not appear to have deep knowledge about the Fed's legal mandates, they generally intuit that the Fed should be responsible for

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32. See, e.g., Peter Nedergaard, European Union Administration: Legitimacy and Efficiency 39 (2006) (noting that, in the EU case, "inadequate social legitimacy . . . [is] due to the extension of the traditional political boundaries of the decisionmaking process. Hence, it would be no solution to the problem of societal legitimacy just to award the European Parliament more power").

33. As Paul Tucker wrote in summarizing his book on central bank legitimacy broadly, "To be accepted as legitimate, a government institution's design and operation (in their broadest sense) must comport with a political society's deepest political values. For constitutional democracies, those include the values of democracy, constitutionalism (including, importantly, the separation of powers), and of the rule of law." Paul Tucker, Central Banking and the Rule of Law, 40 Cato J. 431, 432-433 (2020).

34. See generally Skinner, supra note 14.

technocratic decisions about prices and leave political choices to elected officials. This sentiment becomes stronger when the Fed's price stability mandate gets neglected.

More specifically, from the first wave of our survey, in Spring 2021, to the second wave a year later, in 2022, survey respondents became aware of high inflation and their confidence in the Fed deteriorated. This reduction in confidence also came with a marked reduction in support for a more expansive role for the Fed. We also found notable public disagreement about the proper role of the Fed. This disagreement is in part political—those that support the current President are more likely to prefer for the Fed to have responsibility for a wide range of policy areas (like climate change or inequality). Herein may well lie the linchpin to restoring the Fed's legitimacy and in turn its credibility. And it informs our ultimate recommendations about how the Fed should pursue its congressionally determined objectives within the confines of its mandate.

Ultimately, there are high stakes in recovering the Fed's legitimacy. For one, American society benefits from an authoritative Fed in moments of economic turmoil.[35] History teaches that a passive or weak institution leaves a national economy—and hence society—in decades-long distress.[36] Far better for America's central bank to be relatively uncontested in moments of financial or economic crisis. The Fed's ongoing legitimacy in peaceful times creates a bonding glue that keeps the institution's authority intact even if and when occasional missteps happen—in crisis-fighting times or otherwise.[37]

Moreover, there are key constitutional and administrative law questions still unanswered about the Fed. And they all center around the question examined here, the legitimacy of Fed expansion. Can the Framers' Madisonian principles of separated powers justify a Fed that moves beyond its core of expertly fashioned monetary policy (and bank regulation and supervision)? Does the compromise struck in 1913—which melded Jeffersonian concerns for States' rights with Hamilton's vision of a strong centralized public finance institution—hold firm with a Fed that expands into a larger, more dominant institution? Finally, how does the Fed's special version of "independence" preserve both of these principles of separated powers and limited federal government, notwithstanding the Fed's awkward place in the administrative state?

The Article uses law and macroeconomics to shed light on these knotty questions.

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35. See The Semiannual Monetary Policy Report to the Congress: Hearings Before the S. Comm. on Banking, Hous., and Urb. Affs., 117th Cong. (2021) [hereinafter The Semiannual Monetary Policy Report] (statement of Patrick J. Toomey, Member, S. Comm. on Banking, Hous., and Urb. Affs.) ("acknowledging the crucial role played by the Fed in our economy" noting "the ability to direct interest rates and control the money supply is extraordinarily important").

36. As famed and well-respected monetary economists Milton Friedman and Anna Schwartz set out in their monetary history of the United States, the passive policies of the early Fed were largely responsible for the disastrous outcome of the Great Depression and that a more active Fed—similar to those actions taken in 2008 and 2020—would have saved years of suffering in businesses and households in America. See Milton Friedman & Ann Schwartz, A Monetary History of the United States, 1867-1960 (1963).

37. See Tucker, supra note 33 ("The legitimacy of institutions matters greatly because it is what holds things together when, inevitably in any field, public policy occasionally fails.").

Part I sets out a new framework for viewing the sources and manifestations of Fed legitimacy. That is, the laws and internal norms that justify the Fed's exercise of power. Again, these are presented as observable laws and institutions, not abstract theories. As such, Part I offers a novel, standalone, historically specific framework for assessing Fed legitimacy. Part II presents our empirical results. It explains the method of the study and our results, both narratively and with graphics. Part III considers implications. Specifically, it points to two implications that might follow from an expanded Fed: one, a greater divide between ordinary households and elites; and two, a more politicized, presidentially-controlled Fed. Both outcomes, we suggest, would stand to exacerbate polarization in America.

I. The Law and Norms of Fed Legitimacy

As professor Richard Fallon remarked in his seminal work on the Constitution, "[l]egitimacy is a term much invoked but little analyzed."[38] Professor Fallon's statement may be as true for constitutional debates (when he wrote) as it is for debates about the Federal Reserve today.[39] But Fed legitimacy need not remain a "slippery concept" either.[40] Extant theoretical and empirical literature on institutional legitimacy teaches that legitimacy is almost always a mixed question of laws and norms, together with social opinion.[41]

More specifically, in their "quest" for legitimacy, institutions like the Fed must maintain both "formal" and "popular" legitimacy.[42] Formal legitimacy has both positive and natural law aspects. The former focuses on *vires*: whether an institution acts within the bounds of its authority which has been established by a democratically elected body[43] The latter refers to more ethereal notions of establishing a "right to rule" based on "conformance to moral principles such as justice and democracy"—like, the rule of law.[44] Melding the two leads some scholars to focus on "institutional

38. Fallon, supra note 27, at 1789.
39. For the most part, legal literature on the Fed does not focus on legitimacy as the primary subject of study, but rather asserts that it needs to be preserved or suggests how it might be undermined. This Part, in contrast, takes an inductive approach to legitimacy which is novel to the research. Searching "Federal Reserve" on the University of Pennsylvania library website returns numerous macroeconomic reviews (similar to the Fed's own research), descriptions of the function of the Fed, and various articles on Fed independence. There are books or articles that mention legitimacy in their title on the first two pages of either search. Cf. Conti-Brown & Wishnick, supra note 16, at 640 (asserting three characteristics of legitimate Fed experimentation in new areas: legality, accountability, and non-coercion).
40. Harlan Grant Cohen et al., Legitimacy and International Courts—A Framework, in Legitimacy and International Courts 4 (Nienke Grossman et al., eds. 2018).
41. See, e.g., Nedergaard supra note 32; Skinner, supra note 14; The Semiannual Monetary Policy Report, supra note 35.
42. See generally Tucker, supra notes 20 and 33 (discussing, widely, parameters and conditions of central banks' legitimacy).
43. See Nedergaard, supra note 32, at 8 (noting that formal legitimacy requires "decisions made following a procedure that has been predetermined by governments or their representatives").
44. Lisa Maria Dellmuth et al., Institutional Sources of Legitimacy for International

qualities"—i.e., processes or policies—that exist within the institution as guardrails against action that departs from law or values.[45]

Popular legitimacy (sometimes also referred to as democratic legitimacy), meanwhile, more generally refers to an institution's ability to maintain "diffuse support," long-term "loyalty," "social trust," "support," and favorable "attitudes."[46] Drawing on this concept of legitimacy led David Easton to conceptualize legitimacy as a "reservoir of . . . [good will]" among the people.[47] One-off policy missteps would not drain the reservoir, but repeated errors or misuse of trust could do so indeed.

Building on this theoretical foundation, Part I considers the laws and internal Fed norms that justify the Fed's decisions and actions. This discussion in particular focuses on three contemporary areas of Fed policy*: (i)* communications with households (as well as the financial elite); *(ii)* an elasticity of power that levels up in economic crisis but returns to baseline in normal times; and *(iii)* independence from the presidency.

A. Communications and Accountability

Accountability is often associated with the legitimacy of institutions that are not democratic.[48] This is especially the case for U.S. administrative agencies and the treaty-based European Union institutions.[49] Mechanisms that force these institutions to remain accountable to courts or legislatures are thus often seen as stand-ins for more directly democratic features.[50]

Organizations: Beyond Procedure Versus Performance, 45 Rev. Int'l Studs. 627, 629 (2019); see Gibson & Caldeira, supra note 10, at 136 (presenting legitimacy as "having something to do with the right (moral and legal) to make decisions"). The notion of the "right to rule" may seem vague but, as others have pointed out, "it is a meaningful concept because it seeks to explain why those addressed by an authority should comply with its mandate in the absence of perceived self interest or brute coercion." Cohen et al., supra note 40, at 4 (citing Daniel Bodansky, Legitimacy in International Law and International Relations, in Interdisciplinary Perspectives on International Law and International Relations 324 (Jeffrey L. Dunoff & Mark A. Pollack eds. 2013).

45. See Dellmuth, supra note 44, at 627.

46. See Nedergaard, supra note 32, at 8; Dellmuth, supra note 44, at 629; Gibson & Caldeira, supra note 10, at 3; Fallon, supra note 27, at 1828. The distinct concepts of formal and popular legitimacy find overlap in sociological legitimacy, first theorized by Max Weber, which refers to "an active belief by citizens . . . that particular claims to authority deserve respect or obedience"). Fallon, supra note 27, at 1795, 1843.

47. David Easton, A Systems Analysis of Political Life 278 (1965).

48. See Charles Goodhart & Rosa Lastra, Central Bank Accountability and Judicial Review, 32 SUERF Eur. Money & Fin. Reform 1 (May 2018), https://perma.cc/BXS6-BEX5 (noting that "[a]ccountability . . . is a constitutive part of the design of an independent agency in a democratic system, whose aim is to bring back the central bank to the system of checks and balances").

49. See, e.g., Nedergaard, supra note 32 (arguing that public hesitance to identify with the EU compounds on the EU's legitimacy troubles and cannot be rectified simply by granting more supposedly democratic power to the European Parliament); Peter M. Shane, Legislative Delegation, the Unitary Executive, and the Legitimacy of the Administrative State, 33 Harv. J.L. & Pub. Pol'y 103, 107 (2010) (noting the additional hurdles to legitimacy presented when an organization is inherently undemocratic, like an administrative agency).

50. See Geir Ulfstein, The Human Rights Treaty Bodies and Legitimacy Challenges, in

Judicial review, in particular, is often situated as the primary check against these agencies' and institutions' overreach. The prospect of a court's review of an agency or institution's actions should in theory loom large when an institution acts, incentivizing it to hew closely to its legal mandate, thereby anticipatorily checking the agency's expansions.[51] Judicial review also more specifically forces agencies to give reasons, enabling the courts to ascertain whether any given action taken is consistent with democratic values, like due process.[52] For these reasons, the Administrative Procedure Act ("APA") provides robust mechanisms of judicial review of agency actions (and in some cases inaction).[53] And indeed, precisely as Professors Charles Goodhart and Rosa Lastra point out, "judicial review of administrative actions to prevent an arbitrary and unreasonable exercise of discretionary authority is an important element in the rule of law."[54]

Yet the Fed is unique among facets of the administrative state in its practical insulation from judicial review.[55] The Fed's actions are rarely (if ever) reviewed in court. Most actions taken regarding the Fed's monetary policy authority and tools are considered non-justiciable by the federal courts.[56] In *Riegle v. FOMC*, the D.C. Circuit expressly set Fed-related questions outside the federal courts' purview.[57] In the case,

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Legitimacy and International Courts 284, 286 (Nienke Grossman et al., eds. 2018).

51. For example, in May 2020, the German Federal Constitutional Court ruled that the bond-buying program of the European Central Bank was contrary to governing EU law. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] May 5, 2020, 154 Entscheidungen des Bundesverfassungsgericht [BVerfGE] 154, 17-152 (Ger.); see also Emily Hammond & David L. Markell, Administrative Proxies for Judicial Review: Building Legitimacy from the Inside-out, 37 Harv. Envtl L. Rev. 313, 313 (2013) (noting that "the rigors of judicial scrutiny can further democratic accountability and otherwise incentivize legitimizing behaviors").

52. See Hammond & Markell, supra note 51, at 325 (noting that reason-giving "facilitates oversight more broadly"); Shane, supra note 49 at 108 (emphasizing the importance of the public's ability to "insist on justifications for the exercise of power").

53. See generally Jared P. Cole, Con. Rsch. Serv., R44699, An Introduction to Judicial Review of Federal Agency Action (2016) (discussing the various provisions under the APA that enable federal court review of agency action).

54. Goodhart & Lastra, supra note 48, at 4.

55. See Peter Conti-Brown, The Power and Independence of the Federal Reserve 94, 117-20 (2016) (noting that "there is no mechanism provided by statute or judicial decision to review Fed actions in court"). Professors Goodhart and Lastra argue that judicial review should be available to determine the question of whether the central bank is acting within its mandate. Goodhart & Lastra supra note 48, at 4 (arguing that central bank discretion extents only to the "freedom to act within a legal framework" and hence judicial review "does extent to the parameters and legal framework that surround such decision in order to determine whether or not the central bank mandate has been exceeded"). In the U.S., such a case has never been adjudicated. Several such cases, have, however, been adjudicated in European Courts. See id. at 5 (citing these examples). Though it bears noting that the Federal Reserve is subject to the Administrative Procedure Act. See What specific steps does the board take to issue a regulation?, Bd. of Governors of the Fed. Rsrv. Sys. (June 29, 2018), https://perma.cc/WP89-V23B.

56. Justiciability as used here refers not only to the jurisdictional limits of courts to review Fed actions, but also to the limitations imposed by a plaintiff's lack of standing to bring a case against the Fed as a matter of course.

57. Riegle v. Fed. Open Mkt. Comm., 656 F.2d 873, 881 (D.C. Cir. 1981).

the court created a Fed-specific jurisdictional restriction it dubbed "circumscribed equitable discretion."[58] Referring to separation-of-powers concerns, the *Riegle* court presented its new Fed doctrine as a "standard [that] would counsel the courts to refrain from hearing cases which represent the most obvious intrusion by the judiciary into the legislative arena: challenges concerning congressional action or inaction regarding legislation."[59] *Riegle* may well make it highly unlikely that any federal court will take up Fed questions in deference to the legislative branch.

Even if they did, there is a separate jurisdictional barrier related to the question of a plaintiff's standing. These longstanding restrictions on the federal courts' power under Article III of the Constitution require facts that suggest a putative defendant has caused an actual injury to the plaintiff which could in turn be remedied by a court's decision.[60] As such, plaintiffs with mere "generalized grievances" with Fed Board or Federal Open Market Committee ("FOMC") policies cannot successfully challenge the action.[61] This would seem to exclude concerned citizens from seeking court review of a Fed policy.

Financial institutions might have standing, for example, if they were denied access to a liquidity facility or suffered investment losses owing to changes in monetary policy. But that class of plaintiffs likely dare not challenge the Fed in court. After all, in addition to acting as a monetary authority, the Fed also acts as the regulator and supervisor for these large financial holding companies. Their incentives to nettle the Fed with litigation, and risk-souring relationships, are surely very low.[62]

The unavailability of judicial review places heavy weight on other mechanisms of accountability, like legislative and public scrutiny. Indeed, this seems borne out in comparison to other institutions in the administrative state that are more routinely

58. Id. at 882 (D.C. Cir. 1981). Note that in a subsequent case, Melcher v. Fed. Open Mkt. Comm., the Court noted that the claim in Riegle, that the "probable availability of a private plaintiff" to bring the same action brought by a member of Congress gave the Court equitable discretion to "dismiss the legislator's action" as a matter of separation of powers as dicta. Melcher v. Fed. Open. Mkt. Comm., 836 F.2d 561, 563 (1987). However, the Court did not overturn Riegle, instead limiting its application of equitable discretion to instances where "a legislator could obtain substantial relief from his fellow legislators through the legislative process itself." Id. at 565.

59. Id. at 881.

60. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992); see also Valley Forge Christian Coll. v. Americans United for Separation of Church and State, 454 U.S. 464 (1982) (holding that Article III limits the judicial power of the United States to actual cases or controversies).

61. See Melcher v. Fed. Open Mkt. Comm., 836 F.2d 561 (D.C. Cir. 1987) (dismissing a Senator's challenge to the constitutionality of the selection process for FOMC members for lack of standing). Comm. for Monetary Reform v. Bd. of Governors of the Fed. Rsrv. Sys., 766 F.2d 538, 543 (D.C. Cir. 1985) ("We believe that to allow all persons indirectly affected by an agency's decision to challenge its constitutional authority would open up the courts to 'generalized grievance[s] shared in substantially equal measure by all or a large class of citizens, and thereby require the courts to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights.").

62. Indeed, the current Fed Vice Chair for Supervision, Randall Quarles, has noted that there is a significant de facto deterrent for banks to challenge the supervisory decisions of the Fed.

subject to the APA's provisions for judicial review. Arguably, laws and internal norms that allow the public to scrutinize the Fed's internal workings should be more intense—and form a greater part of the institutional ethos—than they do for the closest comparable agencies, like the Securities and Exchange Commission, the Environmental Protection Agency, or the Federal Trade Commission.

Because of the importance of legislative scrutiny as an accountability mechanism, there are several statutory requirements that the Fed explain itself to Congress. For one, 1977 reforms to the Federal Reserve Act require the Board Chair to report at semiannual hearings before both the House and Senate about the Fed and FOMC's performance, objectives, and plans regarding the "growth, or diminution of monetary and credit aggregates for the upcoming twelve months."[63] These hearings are proceeded by an extensive monetary report which are then explained by the Fed Chair's testimony.[64] As former Fed Chair Ben Bernanke has explained, "These semiannual presentations have become an important vehicle for the U.S. central bank to make known its views on the outlook and on the appropriate stance of monetary policy."[65] Congress has other lesser used powers to review the Fed's actions in a true audit-like fashion should it choose to do so.[66]

But even more robust than these statutory requirements are the Fed's policies and norms that seek to facilitate public scrutiny and understanding of Fed actions and decisions. Starting in the late 1990s, and picking up steam in the aughts, the Fed made steady efforts to expose itself more and more to public view.[67] In some respects, the Fed's efforts aim to spread a very basic understanding of what the Fed is and what it does. On that score, the Fed regularly holds press conferences that are filmed and available to the public online; Fed officials frequently give speeches seeking to demystify Fed policy for the public; and the Fed also now has reams of educational material online for open public access.[68]

The Fed also now tries to be much more transparent with the technical aspects of how it arrives at monetary policy decisions within the FOMC. As one key example, in 2007 the FOMC adopted a process of releasing what is known as a "Summary of

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63. Federal Reserve Reform Act of 1977, Pub. L. 95-188, § 202, 91 Stat. 1387, 1387 (1977).

64. See Monetary Policy Report, Bd. of Governors of the Fed. Rsrv. Sys. (June 17, 2022), https://perma.cc/2XWA-C4KQ (featuring testimony and reports since 1996).

65. Ben S. Bernanke, Chairman, Fed. Rsrv., Speech at the Cato Inst. 25th Annual Monetary Conference (Nov. 14, 2007).

66. See, e.g., 5a U.S.C. § 8G(b) (authorizing an audit of the Fed by the Inspector General).

67. Academics have also increasingly advocated for greater transparency in various areas of Fed policy making. See Federal Reserve Accountability and Reform: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs., 114th Cong. 8-33 (Mar. 3, 2015) (statement of Peter Conti-Brown, Academic Fellow, Stanford Law School, Rock Ctr. for Corp. Governance). ("The solution to this opacity seems plain enough: Turn on the lights, increase transparency, define the Fed's limits, and let the work of democratic politics drive the agenda for monetary policy in a clear and transparent way, as it does in so many other areas of our Government.").

68. See Scott A. Wolla, Independence, Accountability, and the Federal Reserve System, Fed. Rsrv. Bank of St. Louis (May 1, 2020), https://perma.cc/RNJ8-56L9; Carola Binder, Fed Speak on Main Street: Central Bank Communication and Household Expectations, 52 J. of Macroeconomics 238 (2017).

Economic Projections" or "SEP."[69] Colloquially, this is known as the "dot-plot."[70]

The SEP is released four times a year, twice in connection with the semiannual monetary policy report and associated testimony and the other two times in conjunction with the minutes of FOMC meetings held around the beginning of the second and fourth quarters.[71] Each FOMC participant submits his or her projections of key economic indicators—real output growth, unemployment, overall inflation, and core inflation, each for several horizons into the future. Based on those projections, each participant offers his or her view on the appropriate path for the federal funds rate.[72] Though these projections are anonymized, they provide a summary of the range of views held by the participants.[73]

Concerning the Fed's legitimacy, there are three important points here of note. First, the bulk of these various policies and procedures around openness, clarity, and communication are not statutorily prescribed. Rather, the Fed has adopted them voluntarily as best practices—Fed officials are clear that they believe this level and style of communication is necessary to maintain its legitimacy.[74] Numerous public statements from Fed Chairs (and other prominent Fed leaders) make plain the link between the Fed's efforts at transparency and reason-giving requirements fundamental to due process and the rule-of-law.[75]

For example, when discussing the launch of the new SEP process, former Fed Chair Ben Bernanke went to some lengths to explain,

> increased openness is a welcome development for several reasons. Most importantly, monetary policy makers are public servants whose decisions affect the life of every citizen; consequently, in a democratic society, they have a responsibility to give the people and their elected representatives a full and compelling rationale for the decisions they make. Good communications are a prerequisite if central banks are to maintain the democratic legitimacy and independence that are

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69. See Bernanke, supra note 65 (announcing modernized approach to a more robust SEP process). For the most recent SEP, see, Summary of Economic Projections, Fed. Rsrv. Bd. (June 16, 2021), https://perma.cc/5CDL-MC4U.

70. See id.

71. See Ben S. Bernanke, Federal Reserve Economic Projections: What are they Good For?, Brookings (Nov. 28, 2016), https://perma.cc/JE9Q-SH69.

72. Id.

73. Another noteworthy example is the Fed's efforts to explain its approach to one of its newer monetary policy tools, quantitative easing. See, e.g., Elizabeth A. Duke, Governor, Fed. Rsrv., Speech at the Women in Housing and Finance Annual Meeting (June 15, 2009).

74. See Ben S. Bernanke, Chairman, Bd. Of Governors of the Fed. Rsrv. Sys., Central Bank Independence, Transparency, and Accountability, Speech at the Institute for Monetary and Economic Studies International Conference (May 25, 2010), https://perma.cc/8PKX-LFTM ("Central bank independence is essential, but, as I have noted, it cannot be unconditional. Democratic principles demand that, as an agent of the government, a central bank must be accountable in the pursuit of its mandated goals, responsive to the public and its elected representatives, and transparent in its policies.").

75. See, e.g., Bernanke, supra note 65.

essential to sound monetary policymaking.[76]

The FOMC reiterated similar sentiment when announcing significant changes to its decision-making framework in August 2020.[77]

Second, the Board and FOMC place particular emphasis of late on communicating directly with households. This represents a conscious shift from attempting to be transparent with Congress (as representatives of the public) to trying to be transparent with households directly. Again, the rationale behind this shift is anchored in an effort to sustain legitimacy. "Of course," as Bernanke explained it, "we will continue to talk to economists and market participants, but that is not enough. Ultimately, the legitimacy of our policies rests on the understanding and support of the broader American public, whose interests we are working to serve."[78] There is a strong flavor of Madison's republican ideals at work in the Fed's strain to reach ordinary households.

Indeed, for these central bankers, the virtue of "opening up about monetary policy" is tied to giving the public a "voice" if not a formal "vote on monetary policy."[79] Part of the way the Fed has given the public a "voice" is through "Fed Listens," a series of "community listening sessions" that took place throughout the country in 2019. These sessions "engaged a wide range of organizations—employee groups and union members, small business owners, residents of low- and moderate-income communities, workforce development organizations and community colleges, retirees, and others—to hear about how monetary policy affects peoples' daily lives and livelihoods."[80] Chairman Powell frequently cites the Fed Listens events as essential to the Fed's Review of Monetary Policy Strategy, Tools, and Communications in 2019-2020.[81]

Third, the effort to subject itself to outside scrutiny also, necessarily, places emphasis on the Fed as an objective, fact-based, decisionmaker. For Chair Powell, the privilege of discretion and autonomy is granted on condition "that we can effectively pursue our statutory goals based on facts and objective analysis."[82] It follows that public scrutiny can only have a disciplining effect if the public has a level standard against which it can measure the Fed's actions—subjectivity allows obfuscation and

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76. Id.
77. "The Committee seeks to explain its monetary policy decisions to the public as clearly as possible. Such clarity facilitates well-informed decision making by households and businesses, reduces economic and financial uncertainty, increases the effectiveness of monetary policy, and enhances transparency and accountability, which are essential in a democratic society." Bd. of Governors of the Fed. Reserve Sys., 2020 Statement on Longer-Run Goals and Monetary Policy Strategy (Aug. 27, 2020), https://perma.cc/5K8V-VUDM.
78. Ben S. Bernanke, Chairman, Bd. Of Governors of the Fed. Rsrv. Sys. At the Ceremony Commemorating the Centennial of the Federal Reserve Act (Dec. 16, 2013).
79. Haldane, supra note 16.
80. Fed Listens, Bd. of Governors of the Fed. Reserve Sys., https://perma.cc/U4KK-X7UV (last visited July 23, 2021).
81. Id.
82. The Economic Outlook: The View from the Federal Reserve: Hearing Before the H.R. Comm. on the Budget, 116th Cong. 8 (Nov. 4, 2019) (statement of the Hon. Jerome H. Powell, Chair, Bd. Of Governors of the Fed. Rsrv. Sys.).

evasion.[83]

So in summary, the Fed views communication with the public as essential to its legitimacy. It thus voluntarily adopts (and frequently seeks to improve) policies that enable external stakeholders—and most of all the public directly—to look into, and ideally understand, what the Fed is doing. One question to be revisited in Part III is whether an expanded Fed evades the efficacy of these policies—particularly in light of the absence of judicial review to buttress public scrutiny.

As noted at the outset of this section, the Fed is not alone among non-democratic institutions in relying on accountability to legitimize its behavior (though the Fed does arguably do so with a heavier hand). The second two conditions of the Fed's legitimacy—independence from the Executive and elasticity of power—are, in contrast, highly specific to the Federal Reserve.

B. Presidential Independence

For the Fed, accountability and independence are often discussed hand-in-hand.[84] While other agencies in the administrative state are also referred to as "independent," the Fed's independence is unique.[85]

Generally, under prevailing Supreme Court law, the question of an agency's independence turns on whether it is a multi-member commission or a single-director body. In 1935, the Supreme Court held in *Humphrey's Executor* that the President could only remove the head of an agency that performed "quasi-legislative functions" "for cause."[86] Since that time, the for-cause removal provision has been taken as the primary indicator of an agency's independence—and independence, in turn, is defined almost

83. See Haldane, supra note 79 (remarking that "[t]ransparency plus a clear target imposed discipline on the Bank [of England]").

84. See Rosa Lastra & Christina Parajon Skinner, Sustainable Central Banking (forthcoming) (manuscript at 39) (on file with author) ("Accountability is not simply an 'add-on' to justify independence, hence the term 'accountable independence'. Accountability is a constitutive part of the design of an independent central bank in a democratic system and the aim of its 'institutional' articulation is to bring back the central bank to the democratic system of checks and balances.").

85. Notably, references to the Fed's independence are nearly always references to the Executive branch and not from Congress. See generally Binder & Spindel, supra note 24 (discussing the ways in which the Fed is accountable to Congress).

86. See Humphrey's Ex'r v. United States, 295 U.S. 602 (1935) (holding that the President can only remove executive officials of "quasi-legislative" or "quasi-judicial" bodies for cause). There is a large administrative law literature discussing the markers of agency independence. See, e.g., Kirti Datla & Richard L. Revesz, Deconstructing Independent Agencies (and Executive Agencies), 98 Cornell L. Rev. 769 (2013) (recounting the history of agency independence, which developed in the 1930s, at which time "influential members of Congress saw independence agencies 'as a device for counteracting the trend toward concentration of power in the executive branch under a strong president'" (quoting Marver H. Bernstein, Regulating Business by Independent Commission 53 (1955)). The literature on central bank independence has proceeded on a separate, more specific, track. See, e.g., Christina Parajon Skinner & Michael Salib, Executive Override of Central Banks: A Comparison of Legal Frameworks in the U.S. and U.K., 108 Geo. L.J. 905 (2020) (discussing the ways in which the legal powers of executive control over central banks differ in the U.K. and U.S.).

entirely by the ease with which a President can remove an agency's head.[87] Sometimes administrative law scholars note other, secondary characteristics of independence, such as long terms for appointed leaders or budgetary autonomy.[88] But the Fed's independence simply does not grow from those particular vines.[89]

Instead, the Fed has a special independence that proceeds from a tradition of certain central bank-specific norms as well as from the Fed's historic relationship with the U.S. Treasury. The Fed was not "born" independent from the Executive branch. To the contrary, like other leading central banks of the era, the Federal Reserve Act of 1913 provided that the Executive would play a rather prominent role in the early Fed. It established the Treasury Secretary as an ex officio member of the Fed's Board.[90] It also provided an ex ante mechanism for yielding to the Treasury in cases where the Fed and Treasury's jurisdiction might overlap.[91]

Yet as the Fed's identity and role evolved, both Congress and the Fed took intentional steps to remove the Fed from the Treasury's control.[92] The Banking Act of 1935 formally distanced the Fed from the Treasury, and hence Executive control, in several key respects.[93] That Act required the Treasury Secretary to resign from the Board of Governors so that the Board could perform its monetary policy functions (which had just gotten off the ground, so to speak) free from political influence. It also

87. In 2020, the Court significantly limited Humphrey's Executor. See Seila Law v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183 (2020) (limiting Humphrey's Executor to multi-member commissions and striking as unconstitutional a "for cause" restriction on removal for a single-director agency).

88. See, e.g., Datla & Revesz, supra note 86; see generally Conti-Brown, supra note 55 (discussing the complexities of the Fed's independence).

89. No sitting President has ever attempted to remove a Fed Chair (though two have publicly expressed their desire to do so!). President Johnson wanted to fire Bill McChesney Martin for expressing his desire to curb inflation, but the Attorney General at the time advised against it, since no President had ever tested the law in this regard. Kevin Granville, A President at War With His Fed Chief, 5 Decades Before Trump, N.Y. Times (June 13, 2017), https://perma.cc/3EEV-ZJR7. President Trump also blustered at one point that he wished to fire Chair Powell for indicating the FOMC would raise rates. In the end, though, he did not try and so the question of whether and on what terms the President could fire a sitting Fed chair was not adjudicated. Jeanna Smialek, Fed, Pressed by Trump to Cut Rates, Faces Fire No Matter What it Does, N.Y. Times (July 9, 2019), https://perma.cc/55BK-BQ5C. Governors almost never serve out their full fourteen-year terms (opportunities elsewhere may be too enticing!) and the multi-member body is still subject to a Chair. See Peter Conti-Brown, What Happens if Trump Tries to Fire Fed Chair Jerome Powell, Brookings (Sept. 9, 2019), https://perma.cc/E4P7-J92N ("Congress created a contingency for absences and vacancies in the Board Chair: the Vice Chairman . . . would take over in absence of the Chair."); David Wessel, Who Has to Leave the Federal Reserve Next?, Brookings (Jan. 3, 2022), https://perma.cc/RD4Q-KEF9 ("The median term length [of a Fed governor] is a little over five years.").

90. See Allan H. Meltzer, A History of the Federal Reserve: 1913–1951 4 (2003).

91. 12 U.S.C. § 247b. This provision "reserves" power to the Treasury: "wherever any power vested by this Act in the Federal Reserve Board or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary."

92. For a fulsome discussion of this relationship throughout history, see Skinner & Salib, supra note 86.

93. 12 U.S.C. § 288.

relocated the Fed's physical offices from outside the Treasury Department building to another location.[94]

These changes were not a happenstance of statutory drafting; independence from the Treasury was the clear intent. As then Fed Chair (known as "Governor" before 1935) Marriner Eccles made clear to Congress in hearings on the bill:

> what I am advocating is that the power and the responsibility for monetary policy be placed in a central body that is charged with the public interest, and if it is felt that the Federal Reserve Board is a political board and will be dominated by political expediency, let us say, rather than public interest, in monetary policy, then, certainly, there should be some changes. But I do not think that the Federal Reserve Board under this legislation should be considered a body that will act in connection with its monetary policies, by reason of political expediency rather than in the public interest.[95]

In Eccles' view, the Board "should not be considered a political body. The law makes the Board a nonpartisan body, on which political parties . . . are not represented."[96]

After World War II, the Fed again sought to assert its independence from the Executive branch after years of pressure from the Treasury to maintain rates that would support the market for the Treasury's wartime bonds (and even after the war had ended to maintain a smooth functioning for government securities).[97] When inflationary pressures eventually took hold with the onset of the Korean War, "[a] fierce debate between the Fed and the Treasury then ensued as both vied for control over interest rates and U.S. monetary policy."[98]

Significant political drama ensued between the then Fed Chair Thomas McCabe and then-Treasury Secretary John Snyder. Ultimately, a détente was reached whereby the Treasury agreed to release the Fed from its de facto obligation to provide accommodative financing of the government's debt in the so-called Fed-Treasury Accord of 1951. The agreement reads as follows:

> The Treasury and the Federal Reserve System have reached full accord with respect to debt-management and monetary policies to be pursued in furthering their common purpose to assure the successful financing of the Government's requirements and, at the same time, to minimize monetization of the public debt.[99]

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94. History of the Marriner S. Eccles Building and William McChesney Martin Jr. Building, Bd. of Governors of the Fed. Rsrv. Sys. (Mar. 2, 2021), https://perma.cc/HUH2-FCFZ.

95. Banking Act of 1935: Hearings on H.R. 5357 Before the H.R. Comm. on Banking and Currency, 74th Cong. 374 (1935) (statement of Marriner S. Eccles, Governor, Fed. Rsrv. Bd.).

96. Id. at 236.

97. See Background on the Accord, Fed. Rsrv. Bank of Richmond, https://perma.cc/DLN6-JMHW (last visited July 21, 2021).

98. Id.

99. Press Release, Sec'y of Treasury & Chairman of Bd. of Governors of Fed. Rsrv. Sys., Joint

Notably, the Accord is not a legal text at all—but something more akin to a non-binding memorandum of understanding ("MOU"). Still, it remains today an important symbol of the relationship and an observed border between the two authorities.

Accordingly, when Congress did give the Fed a formal mandate for price stability in 1977, there was a longstanding history of Fed independence that provided crucial context. By that point, there was no question that the Fed would use its monetary policy authority to pursue price stability with no obligation to heed Executive branch instructions or desires. This was then buttressed by the wave of independence movements for central banks that transpired in the 1990s, coinciding with broad consensus around an objective inflation target—pegged at 2 percent.[100] After all, once the Fed has publicly established a firm objective, "the scope for [governmental] interference is greatly reduced—provided you're actually doing your job."[101]

A point of international comparison highlights how the Fed's independence from the Executive is even unique among peer central banks. In the U.K., for example, although the Bank of England has statutorily granted operational independence over monetary policy,[102] H.M. Treasury has the power to set its goals. Under U.K. law, the Bank of England is obligated to have regard to the government's economic policy when fashioning monetary policy; additionally, H.M. Treasury can define what price stability means in an annual remit letter.[103] In extreme circumstances, H.M. Treasury even have the power to suspend price stability mandate and essentially direct monetary policy.[104] The legal frameworks of other major central banks, like the Bank of Canada and the European Central Bank, also allow for relatively more Executive influence than does the Fed.[105]

Announcement by the Secretary of the Treasury and the Chairman of the Board of Governors, and of the Federal Open Market Committee, of the Federal Reserve System (Fed–Treasury Accord) (Mar. 4, 1951).

100. The Bank of England, for example, was given statutory authority for monetary policy in the Bank of England Act 1998 which was broadly recognized as a grant of operational "independence" from the executive pursuant to edit from then Chancellor of the Exchequer Gordon Brown in 1997. See Labour's Good Start, Economist (May 8, 1997), https://perma.cc/GJ6E-4Q8V; see also Letter from Gordon Brown, Chancellor of the Exchequer, HM Treasury, to Edward George, Governor, Bank of Eng., on the New Monetary Policy Framework (May 1997) (on file with the Treasury Chambers). https://perma.cc/89V2-RGUC.

101. Lawrence H. Summers et al., Rethinking the Fed's 2 Percent Inflation Target 21 (2018), https://perma.cc/2SLC-UF9T.

102. Bank of England Act, (1998) § 10 (Eng.).

103. Bank of England Act, (1998) § 12 (Eng.) (requiring that the Chancellor specify the definition of price stability and the government's economic policy objectives at least once in every period of 12 months).

104. Bank of England Act, (1998) § 19 (Eng.).

105. See Bank of Canada Act, R.S.C. 1985, c B-2, s. 14 (Can.) (noting that if the Minister of Finance disagrees with the monetary policy decisions of the Bank, the Minister may order the Bank to comply with the Ministry's monetary policy recommendations); Christoph S. Weber & Benedikt Forschner, ECB: Independence at Risk?, 49 Intereconomics 45, 49-50 (describing how the nationality of the ECB Executive Board permits the domestic monetary policy goals of dominant nations to prevail over others). And the ECB has a secondary mandate to "support the general economic policies in the Union," though it shall not take "instructions" from any Member State governments. Treaty of the

Overall, this legal, political, and historic context demonstrate that a very high degree of insulation from Executive influence is core to the Fed's own special brand of independence—distinctly among other U.S. administrative agencies and other foreign central banks.

Two rationales are commonly offered for central bank independence. As applied to the Fed's independence from the U.S. President, both rationales have roots in its legitimacy. The first of these rationales is largely economic. In periods when the economy is doing well—too well—or "overheating" it is the central bank's job, as manager of stable prices, to cool things down, rein in rates, and as the famous saying goes, "take away the punch bowl just when the party gets going."[106]

Generally, this rationale applies to all central banks tasked by their legislatures with a price stability goal. A large economics literature beginning in the 1970s and 80s supported the delegation of price stability to an independent central bank because a politician would face incentives to overheat the economy before elections, reaping short-run political gains from low unemployment, but leading to high inflation in the long run.[107]

Still, this universal economic rationale may well have special salience for the Fed in light of the particular dynamics between Fed Chairs and U.S. presidents. The urge for Presidents to sub-legally pressure sitting Fed chairs seems to be something irresistible and sits outside the law. Numerous Presidents from Lyndon Johnson to Donald Trump have criticized the Fed for monetary prudence that seemed detrimental to their political popularity. But to abdicate the responsibility, and cater to the President, impairs the Fed's ability to meet its price stability mandate. Perhaps the best-known example of such an episode transpired between Fed Chair Arthur Burns and President Richard Nixon. Burns pandered to Nixon, juiced rates irresponsibly, and thereby contributed if not caused the Great Inflation.[108] Insofar as one core measure of legitimacy is how well an institution performs its job—its policy outputs—the substitution of presidential priorities for stable prices would invariably undermine public respect for the central bank.[109]

A second rationale is grounded firmly in U.S. constitutional law and the structural division of power among the Legislative and Executive Branches. Were the Fed to use

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Functioning of the European Union, Art. 2, 7, 59 O.J. of the Eur. Union (June 7, 2016). For an in-depth comparative treatment of Executive power over independent central bank decisions, see Skinner & Salib, supra note 86.

106. Melody Petersen, William McChesney Martin, 91, Dies; Defined Fed's Role, N.Y. Times (July 29, 1998), https://perma.cc/E7XQ-23BS.

107. Alberto Alesina & Lawrence H. Summers, Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence, 25 J. of Money, Credit & Banking 151 (1993); Kenneth Rogoff, The Optimal Degree of Commitment to an Intermediate Monetary Target, 100 Quarterly J. of Econ. 1169 (1985).

108. See Carola Conces Binder, Political Pressure on Central Banks, 53 J. of Money, Credit and Banking 715 (2021); Skinner, supra note 19, manuscript at 78-79. For a discussion of Nixon pressuring Burns, see Burton A. Abrams, How Richard Nixon Pressured Arthur Burns: Evidence from the Nixon Tapes, 20 J. of Econ. Perspectives 177 (2006).

109. See, e.g., Cohen et al., supra note 40, at 6 (noting that legitimacy stems in part from "results-oriented factors"); Dellmuth, supra note 44, at 630 (nothing that sometimes a body can earn legitimacy from "problem-solving outcomes for the people" even if it lacks democratic participation).

its monetary policy tools to serve the President—to advance goals on the Executive agenda—it could be seen as taking action that is fiscal in nature. Constitutionally, this is problematic insofar as the Fed's power as a monetary authority derives from a specific power granted to Congress—"[t]o coin [m]oney, [and] regulate the [v]alue thereof."[110] Just as the Executive cannot directly exercise this power, the Fed cannot do so for it.[111] Restrictions on the mixing of Article I and II powers also become manifest when considering the taxing power. The President has no constitutional authority to levy taxes, only Congress does.[112] The Fed cannot, therefore, be directed (or persuaded) by the Executive to indirectly raise taxes via its power to create money.[113] A Fed that enables a President to commandeer those Article I powers would be expressly contrary to our constitutional values and thus inconsistent with its legitimacy.[114]

C. Elastic Power

The extent to which the Fed can level its power up and down—elastically—depending on the economic circumstances can also be seen as a third condition of its general legitimacy. The Fed is also unique among U.S. agencies in the amount of discretion Congress has given it in its constitutive statute, the Federal Reserve Act. Many of its most relied-upon provisions—section 13(3) for emergency lending to non-banks, section 14 for open-market operations—are generally acknowledged to flex quite a bit to give way to the Fed's judgments about what is necessary to address economic shocks in order to preserve monetary and financial stability.

There is some evolutionary history here, too. The Fed did not start as an active crisis manager, thinking proactively about how to blunt the pain of an economic shock. Indeed, one of the Fed's earliest experiences with an economic shock of serious magnitude was the stock market crash of 1929 and the ensuing macroeconomic fallout. At the time, parts of the Fed were beholden to a doctrine referred to as the Real Bills doctrine, which essentially guided the Fed to supply credit only for productive uses.[115]

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110. U.S. Const., art. I, § 8, cl. 5.

111. Arguably, this differs from a delegation such as that made to the SEC, which draws on a more general delegation of a general provision (i.e., "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"). U.S. Const. art. I, § 8, cl. 3).

112. The taxing and spending clause gives Congress the power to "lay and collect [t]axes, [d]uties, [i]mposes and [e]xcises . . . ." U.S. Const. art. I, § 8, cl. 1.

113. Because increasing the money supply reduces the value of the dollar—i.e., creates inflation—increasing the money supply to finance projects on the executive agenda is the economic equivalent of raising taxes to pay for a government project.

114. See Christina Parajon Skinner, The Monetary Executive, 91 Geo. Wash. L. Rev. (forthcoming 2023) (discussing the democratic problems with presidential power over money and public spending).

115. For a comprehensive account of the Real Bills doctrine, and how it influenced the policy of the early Fed, see Thomas M. Humphrey & Richard H. Timberlake, Gold, The Real Bills Doctrine and the Fed: Sources of Monetary Disorder, 1922-1938 (2019); see also Friedman & Schwartz, supra note 36 (retelling this history). See also Gary Richardson & William Troost, Monetary Intervention Mitigated Banking Panics During the Great Depression: Quasi-Experimental Evidence from the Federal Reserve District Border, 1929-1933, 117 J. of Pol. Econ. 1031 (2009) (discussing the Richmond Fed's interventions).

Because the economy had been hard hit and banks pulled back from lending there was naturally a slowdown in production. This, in turn, meant that banks did not have the "real bills" to supply as collateral to secure discount window loans from their local Federal Reserve Banks, and hence they did not receive much-needed credit. The Real Bills doctrine was essentially a pro-cyclical policy that positioned the Fed as a passive observer of the Great Depression; the influence of the Real Bills doctrine, essentially a pro-cyclical policy, limited the Fed in actively managing the Great Depression.[116]

This slightly scarred the Fed and hung heavily on Fed leaders. Tellingly, in a 2002 speech, Ben Bernanke pointedly remarked, "Regarding the Great Depression. You're right, we did it. We're very sorry. But thanks to you, we won't do it again."[117] (Bernanke was referring to Milton Friedman and Anna Schwartz whose monetary history of the United States had identified the Fed's passive policies as the culprit of that period.) Not surprisingly, the Bernanke Fed was adamant about not repeating that past failure in 2008 when the housing market dropped and Lehman Brothers was allowed to fail.

In reaction, the Fed took a forward-leaning approach in interpreting its authority under section 13(3) of the Federal Reserve Act. That provision (which had hardly been used before '08) allows the Fed to lend to non-banks in "unusual and exigent" circumstances.[118] It used that authority to establish liquidity facilities to rescue non-bank firms—like investment bank Bear Stearns and insurance behemoth AIG[119]—and to establish liquidity facilities to backstop commercial paper markets and money market funds.[120] It also used 13(3) to lend generously to many different nonbank entities that could offer various asset-backed securities as collateral.[121]

The Fed also took a boundary-pushing interpretation of its power under section 14 of the Federal Reserve Act—to buy securities in the open market—to create an entirely new tool of monetary policy known as quantitative easing or "QE."[122] When the Fed realized that its conventional tools (like lowering interest rates) could do no more (at the "effective lower bound") it developed a QE program known as "large

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116. See generally Humphrey & Richard H. Timberlake, supra note 115.

117. Ben S. Bernanke, Governor, Fed. Rsrv. Bd., On Milton Friedman's Ninetieth Birthday, Remarks at the Conference to Honor Milton Friedman at the University of Chicago (Nov. 8, 2002) (transcript available in the Board of Governors of the Federal Reserve System speeches archive).

118. 12 U.S.C. § 343.

119. Fed. Rsrv. Bank of N.Y., Maiden Lane Transactions, Fed. Rsrv. Bank of N.Y., https://perma.cc/Z659-BNHX.

120. See Commercial Paper Funding Facility (CPFF), Bd. of Governors of the Fed. Rsrv. Sys. (Mar. 18, 2020), https://perma.cc/C8F7-L96J; Press Release, Federal Reserve Announces the Creation of the Money Market Investor Funding Facility (MMIFF), Bd. of Governors of the Fed. Rsrv. Sys. (Oct. 21, 2008), https://perma.cc/K94Y-AFKE.

121. Term Asset-Based Securities Loan Facility (TALF), Bd. of Governors of the Fed. Rsrv. Sys. (Feb. 12, 2016), https://perma.cc/LYB6-B6LK.

122. See Skinner, supra note 14, at 265 ("The purpose of QE was to ease market conditions in the moment, and then to generally lower medium- and long-term interest rates."). The Fed engaged in QE through section 14 both during the 2008 Financial Crisis and in response to the COVID-19 pandemic. Id. at 264-66. It is important to note that "nothing in [the] text of section 14 really prohibits the Fed from [undertaking QE]." Id. at 266.

scale asset purchases" whereby it purchased billions of dollars per month of Treasury Securities.[123] The policy idea behind QE was to stabilize confidence in the markets by supporting asset prices, thereby stimulating aggregate demand.[124] Technically, it does these things by targeting long-term interest rates with its purchases.

Opinions differed on the legitimacy of these interventions. For some, they were necessary expansions of power to meet an emergency, consistent with constitutional theories that endorse plenary power for the Executive in times of emergency.[125] On the other side of the viewpoint spectrum were those that looked at the Fed's actions during the 2008 crisis as "challenge[s] [to] the essence of democracy," and the sorry manifestation of years of "mistakes and favoritism."[126] As far as quantitative easing is concerned, it has remained controversial since its creation as scholars and commentators question its distributional effects, its efficacy, and its legality.[127]

Ten years later, in 2020, when the Covid-19 pandemic hit, the Fed once more wheeled out its 13(3) facilities—for primary dealers, commercial paper markets, money market funds, and asset-backed securities markets—and re-started its QE program.[128] It also, that time, leaned in further with 13(3) in two new ways. For one, the Fed created two new 13(3) facilities to assist the corporate bond markets by directly and indirectly buying corporate bonds.[129] This required a novel interpretation of "discounting a note"—one that accepted economic equivalents of note discounting (i.e., outright bond buying). It also created a 13(3) "Main Street Lending Program" facility to lend to small businesses in the real economy—following Congress's instruction in the CARES Act but perhaps eliding the requirements of the Federal Reserve Act that any 13(3) liquidity be provided "for the financial system."[130]

Arguably, despite the wide range of views after the 2008-era interventions, the

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123. See Large-Scale Asset Purchases, Fed. Rsrv. Bank of N.Y., https://perma.cc/KHG4-QVZL (last visited Jan. 27, 2022).

124. Maria N. Ivanova, Quantitative Easing: A Postmortem, 47 Int'l J. Pol. Econ 253, 254 (2018).

125. See Eric A. Posner, What Legal Authority Does the Fed Need During a Financial Crisis, 101 Minn. L. Rev. 1529, 1532 (2017) (noting that the "mainstream view is correct that the Fed acted properly during the financial crisis by lending widely"). See generally Eric A. Posner & Adriane Vermeule, The Executive Unbound: After the Madisonian Republic (2010) (advancing this theory by contending that government expands by "an episodic succession of large emergencies whose timing and nature is unpredictable, but whose existence is not").

126. Wessel, supra note 24, at 7; Jacobs & King, supra note 24, at 152

127. See, e.g., U.K. House of Lords, Economic Affairs Comm., Quantitative Easing: A Dangerous Addiction? (July 2021), https://perma.cc/BFS4-53F9 (summarizing months' worth of expert evidence taken on various issues surrounding QE).

128. Bd. of Governors of the Fed. Rsrv. Sys., supra note 120 ; Money Market Mutual Fund Liquidity Facility, Bd. of Governors of the Fed. Rsrv. Sys., https://perma.cc/MC8Y-RDWT (last accessed July 20, 2021); Term Asset-Based Securities Loan Facility (TALF), supra note 121..

129. Secondary Market Corporate Credit Facility, Bd. of Governors of the Fed. Rsrv. Sys., https://perma.cc/8DFJ-69DX (last accessed July 20, 2021); Primary Market Corporate Credit Facility, Bd. of Governors of the Fed. Rsrv. Sys., https://perma.cc/2CJC-JGWC (last accessed July 20, 2021).

130. CARES Act, § 4029; Main Street Lending Program, Bd. of Governors of the Fed. Rsrv. Sys., https://perma.cc/GEG2-AD5X (last accessed July 23, 2021).

Fed has managed to keep its legitimacy intact by demonstrating that these powers—though greatly enlarged for a time—will be de-escalated at the proper time. This is to say that the Fed has taken pains to show the public that its "wartime" footing will not remain in "peacetime." As soon as practicable it wound down its 13(3) facilities—it did not keep an open tab—and (at a point) attempted to "taper" off from buying assets as part of its QE program.[131] It may well be that the Fed's deliberate exercise of self-restraint—not holding on to increased power although it could—has been the salve for its legitimacy.[132] Because the public can see that the Fed expands when necessary and in the public interest, but shrinks with discipline when calm restores, the Fed can be trusted not to overuse the discretion Congress has given it in sections 13(3) and 14 of the Federal Reserve Act. Critically, then, maintaining this elasticity—a byproduct of self-restraint—will remain an essential ingredient for the Fed's legitimacy going forward.

* * *

On the whole, Part I discussed three ways in which the Fed maintains ongoing legitimacy—communication with Congress and households; insulation from presidential pressure; and self-imposed elasticity of power. Arguably, as these statutory—but mostly voluntary—efforts to act with legitimacy have become expected by the public over the years, they function as de facto conditions of the Fed's legitimacy. The next Part seeks to test empirically how these conditions might fare if and when the Fed expands its authority into new arenas.

II. An Empirical Analysis of Fed Legitimacy

Until now, the Article has mainly discussed the Fed's legitimacy in terms of law, norms, policy, and institutional design. This Part empirically investigates key aspects of the Fed's democratic legitimacy, or legitimacy in the eyes of the public. How much would the public support initiatives expanding the role of the Fed into new areas, such as climate change or inequality? And how have public views of the legitimate role of the Fed changed as inflation has risen over the past year? To that end, the Article now shifts gears to explain our study's methodology and results. Part III will draw out the implications of such results.

A. Methodology Overview

We conduct two waves of a new online survey to study public knowledge and

131. See James A. Dorn, Ending the Fed's Emergency Lending Facilities: Mnuchin v. Waters, Cato Inst. (Dec. 10, 2020), https://perma.cc/ZL3F-HP3H; Eric Milstein, Tyler Powell & David Wessel, What Does the Federal Reserve Mean When It Talks About Tapering, Brookings (July 15, 2021) https://perma.cc/JL7M-RZF9; see also The Economic Outlook: Hearing Before the Joint Econ. Comm., 113th Cong. 6-36 (2013) (statement of Hon. Ben Bernanke, Chairman of the Bd. Of Governors of the Fed. Rsrv. Sys.) (discussing conditions under which the Fed would start to taper off asset purchases).

132. The Fed ended its 2020 QE program in March 2022. See Tim Sablik, The Fed Is Shrinking Its Balance Sheet. What Does That Mean?, Fed. Rsrv. Bank of Richmond (2022), https://perma.cc/NS54-QP76.

opinions about the Federal Reserve. This survey is designed to provide novel empirical evidence about the democratic legitimacy of the Federal Reserve System. As discussed in the previous Part, communication with the public is an important Fed norm intended to promote legitimacy via accountability. Thus, it is important to understand how much the public understands about the Fed's mandate and policies, and how much the public trusts the Fed in its role. We also use the survey to gauge public opinion regarding expanded roles for the Fed, for example in addressing climate change and inequality.

We conducted the survey waves online nearly a year apart, using participants from Amazon Mechanical Turk, with the first wave immediately before a large run-up in inflation and the second wave following months of very high inflation. This allows us to study how the recent rise in inflation has affected public opinions about the Fed. We hypothesize that as inflation has risen, the public has become more aware of the Fed's failure to achieve its price stability mandate. To the extent that this has reduced confidence in the Fed, we expect that it should also reduce public appetite for an expansion of the Fed's responsibilities into other policy arenas.

Our survey is closely related to two main strands of the literature in macroeconomics and political science. The first strand examines respondents' self-reported trust in central banks, mostly focusing on the European Central Bank ("ECB"). The second strand studies central bank communication and household expectations, especially expectations of inflation. Both of these literatures rely on pre-existing longer-running surveys, such as the Michigan Survey of Consumers and the Eurobarometer, as well as on new surveys designed and introduced by the researchers to test specific hypotheses.[133] Our survey is in the latter category—it was designed specifically for the purpose of this research, since pre-existing surveys do not contain all of the constructs of interest to our research.

The survey-based empirical literature on trust in the central bank documents that trust depends, in part, on respondents' sociodemographic characteristics. Higher educational attainment, in particular, is a strong predictor of greater trust in the ECB.[134] There is mixed evidence on whether women or men trust the ECB more[135] and on how trust is associated with political views; one study finds that politically left-leaning individuals tend to trust the ECB more than right-leaning individuals,[136] while another finds just the opposite.[137] It appears that the relationship between political views and

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133. Carola Binder, Presidential Antagonism, 33 Econ. & Pol. 244 (2021); Carola Binder, Coronavirus Fears and Macroeconomic Expectations, 102 Rev. of Econ. & Stats. 721 (2020); Carola Binder & Alex Rodrigue, Household Informedness and Long-Run Inflation Expectations, 85 S. Econ. J. 580 (2018).

134. Durk Burisan & Sven Fürth, Trust Me! I am a European Central Banker, 47 J. Money, Credit & Banking 1503 (2015); Michael Ehrmann, Michel Soudan & Livio Stracca, Explaining European Union Citizens' Trust in the European Central Bank in Normal Times and Crisis Times, 115 Scandinavian J. Econ. 781 (2013).

135. See Erhmann et al., supra note 134; Bernd Hayo & Edith Neuenkirch, The German Public and Its Trust in the ECB: The Role of Knowledge and Information Search, 47 J. Int'l Money & Finance 286 (2014).

136. See Bursian & Fürth, supra note 134.

137. Nils Brouwer & Jakob de Haan, Trust in the ECB: Drivers and Consequences, 70 Eur. J. Pol. Econ. 1 (2022).

trust in the central bank is context-dependent, varying across countries and circumstances. Indeed, in the United States as well, political views about President Trump and opinions about the Federal Reserve are not straightforward, but depend on respondents' exposure to media coverage about the President's antagonistic relationship with the Fed.[138]

This literature also shows that trust in the ECB covaries with trust in other institutions and with macroeconomic or financial conditions. For example, trust in the ECB is correlated with trust in the European Parliament and the European Commission.[139] Trust in the ECB declined in the financial crisis as macroeconomic conditions deteriorated and trust in European institutions in general declined; the ECB was strongly associated with problems in the banking sector in public opinion.[140] A cross-country study using data from 1999-2010 finds that trust in the ECB often depends on macroeconomic conditions that are outside of the ECB's direct mandate, such as real GDP growth.[141] Conversely, price stability has much less influence on trust in the ECB.[142]

Indeed, (lack of) knowledge of the ECB seems to play a large role in public perceptions and trust. A 2011 survey of German households finds that factual knowledge of the ECB is positively associated with trust; however, this relationship is moderated by newspaper reading, which is negatively associated with trust in the ECB.[143] Similarly, a study based on a 2016 and 2017 survey of German consumers shows that trust in the ECB is positively correlated with knowledge about the ECB and is also associated with lower inflation expectations.[144]

Inflation expectations management is a top priority of both the ECB and the Fed. Thus, a related literature focuses on household inflation expectations—how they are formed, and how they may be influenced by central bank communication. Consumer inflation expectations are correlated with demographic characteristics and financial literacy.[145] Newer online surveys provide additional insights into why this is the case. A methodological benefit of conducting online surveys is that researchers can embed randomized "information treatments" into the surveys, allowing causal inference about the effects of the treatments, which typically consist of bits of information about central bank policies or goals, or small portions of central bank communications.[146]

When treated with publicly available information, such as basic information about the Federal Reserve's 2% inflation target, consumers tend to revise their inflation

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138. Binder, supra note 133, at 244-63.
139. Brouwer & de Haan, supra note 137.
140. Ehrmann, et al. supra note 134, at 781-807.
141. Id. at 781-807.
142. Id.
143. Hayo & Neuenkirch, supra note 135.
144. Sathya Mellina & Tobias Schmidt, The Role of Central Bank Knowledge and Trust for the Public's Inflation Expectations (Deutsche Bundesbank Working Paper No. 32/2018).
145. Carola Binder, Long-Run Inflation Expectations in the Shrinking Upper Tail, 186 Econ. Letters 1 (Jan. 2020); Carola Binder, Measuring Uncertainty Based on Rounding: New Method and Application to Inflation Expectations, 90 J. of Monetary Econ. 1 (2017).
146. Olivier Coibion et al., Inflation Expectations as a Policy Tool?, 124 J. of Int'l Econ. 103, 297 (2020); see Binder, supra note 133, at 721–30.

expectations in the direction implied by the information treatment.[147] This implies that central bank communications might be able to influence household beliefs and expectations if the communications reach households. But it also implies that the information provided in the surveys is new to the households, so even basic central bank communications have not yet reached most households.

Our new survey incorporates elements from some of the studies described above—including randomized information treatments—as well as novel questions about respondents' policy beliefs and opinions. For example, while other studies have tested respondents' knowledge of the central bank's mandate, we solicit *opinions* about which policy areas respondents would prefer for the Fed, elected officials, or others to oversee. This provides new empirical evidence about perceptions of democratic legitimacy, and how it is correlated with respondents' characteristics, knowledge, and other views. The information treatments we provide include official information about the Fed's mandate and excerpts from Fed policymakers' speeches that explain, in policymakers' own words, the role that they believe the Fed should play in addressing inequality or climate change. We provide these treatments at random to some respondents to allow us to test whether such information changes respondents' confidence in or beliefs about the Fed.

In the following section, we describe the platform and design of our new survey. Then we discuss the survey respondents' awareness and expectations regarding recent inflation, their reported confidence in the Federal Reserve, and their opinions about which types of policies should be the responsibility of Federal Reserve officials.

B. Survey Platform and Sample

We conducted the first wave of the survey from May 25 through June 13, 2021, and the second wave from April 8 through April 13, 2022. The survey was written in Qualtrics and released on Amazon Mechanical Turk ("MTurk"), following precedent in the economics literature.[148] MTurk is a platform that allows employers to post tasks that workers can complete for a set wage. MTurk is frequently used in the social science literature to obtain samples that are more nationally representative than a convenience sample.[149]

We only allowed respondents in the United States and at least eighteen years old to take our survey. The survey begins by informing respondents about survey confidentiality and verifying that they are at least eighteen years old. We ask, "Do you commit to thoughtfully provide your best answers to each question in this survey?" The respondent must answer affirmatively to proceed with the survey. We drop the fifty-six respondents (3.4% of the sample) who spent less than two minutes taking the

147. Binder & Rodrigue, supra note 133, at 580-98.

148. Id.

149. Adam Berinsky, Greg Huber, & Gabe Lenz, Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk, 20 Pol. Analysis 351–68 (2012); K. Casler, L. Bickel & E. Hackett, Separate but Equal? A Comparison of Participants and Data Gathered via Amazon's MTurk, Social Media, and Face-to-Face Behavioral Testing, 29 Computers in Human Behavior 2156–60 (2013); Kevin E. Levay, Jeremy Freese & James N. Druckman, The Demographic and Political Composition of Mechanical Turk Samples, 6 SAGE Open 1, 1–17 (2016).

survey, to exclude respondents who rushed. Among the 1,603 remaining respondents, the mean survey duration is 8.7 minutes, and the median is 5.4 minutes. Our sample size is consistent with that of similar survey experiments in the economics literature; for example, Binder and Rodrigue (2018) and Binder (2020) use data from 423 respondents and 502 respondents, respectively, for single-wave surveys.[150]

Next, respondents provide their gender, age, educational attainment, and household pre-tax income (in bracketed categories). As is typical with Amazon Mechanical Turk samples, our sample skews somewhat more educated and male than the U.S. population: 64% are male and 69% have a college degree. The average respondent's age is thirty-nine. We have sizeable shares of respondents across the education and income distributions. In all subsequent analyses, we weight our observations to match U.S. population weights in gender and income, again following best practices in the literature.

C. Survey Questions and Information Treatments

After collecting respondents' demographic information, we tested their knowledge of the Fed by asking them to name the Fed's inflation target, following Binder and Rodrigue (2018). Only 35% of respondents in each wave correctly stated the Fed's 2% inflation target, similar to results from a survey conducted in 2019, when 32% knew the inflation.[151]

As indicators of respondents' attentiveness to economic news, we ask them to select their sources of news about the economy, where choices include social media, print sources or newspapers, online sources, television sources, and radio sources; we also ask whether they have heard news about inflation in the past few days. Respondents get news about the economy from a variety of sources, especially online (60%), through social media (45%), and on television (44%).

At this point, experimental treatments are randomly assigned using a 2x4 factorial design. Each respondent either receives or does not receive the "mandate treatment," with equal probability. This treatment explains the Federal Reserve's statutory mandate from Congress:

> The Federal Open Market Committee (FOMC) is firmly committed to fulfilling its statutory mandate from the Congress of promoting maximum employment, stable prices, and moderate long-term interest rates . . . .
>
> The Committee reaffirms its judgment that inflation at the rate of 2 percent, as measured by the annual change in the price index for personal consumption expenditures, is most consistent over the longer run with the Federal Reserve's statutory mandate . . . . The Committee seeks to achieve inflation that averages 2 percent over time, and therefore judges that, following periods when inflation has been running persistently below 2 percent, appropriate monetary

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150. Binder, Presidential Antagonism, supra note 133; Binder, Coronavirus Fears and Macroeconomic Expectations, supra note 133; Binder & Rodrigue, supra note 133.

151. Binder, supra note 133.

> policy will likely aim to achieve inflation moderately above 2 percent for some time.

Each respondent is also randomly assigned to read or not read an excerpt of a speech from a Federal Reserve official discussing inequality or climate change. They are instructed, "Please read this excerpt from a recent speech by a Federal Reserve official." The inequality speech excerpt reads:

> Inequality is still a pressing issue for our nation—one that feels even more urgent in the wake of the health and economic hardships caused by Covid-19, and the social reckoning sparked by the deaths of George Floyd, Breonna Taylor, and too many others.
>
> Not every American gets the same chance at life, liberty, and the pursuit of happiness. And this difference in opportunity translates into differences in outcomes. It leaves us with two Americas: one for those who have, and one for those who have not. This is our shared reality, a reality we have to acknowledge and confront—as individuals, as institutions, and as a nation. . .
>
> How can we build a society that delivers on the promise of equal opportunity and inclusive success? First, the Fed has a critical role to play.

The climate change excerpt reads:

> Across the Federal Reserve System, we have sought to deepen our understanding of the implications of climate change for the U.S. economy and financial system, including through the Virtual Seminar on Climate Economics series, internal groups focused on the emerging climate literature, and academic conferences at several Federal Reserve Banks. Federal Reserve staff are collaborating and sharing knowledge through our System Climate Network and other forums. We have recruited economists with expertise in climate-related topics and obtained a variety of climate-related data resources.

The mean respondent spends approximately forty seconds reading the treatment text. We then solicit respondents' confidence in policymakers and beliefs about the scope of responsibility. The confidence questions ask, "Please tell me how much confidence you have in each of the following to do or to recommend the right thing for the economy." Respondents select "almost no confidence," "only a little confidence," "a fair amount of confidence," or "a great deal of confidence" for President Joe Biden, the Federal Reserve, and the U.S. Congress. The responsibility questions ask, "Please select who you think should be MOST responsible for each of the following types of policies or goals." The policies are tax policy, climate policy, monetary policy, reducing economic inequality, reducing gender inequality, price stability, and full employment. Response options are "elected officials," "Federal Reserve officials," "other unelected officials," "other/none of previous choices," or "unsure."

Next, we ask respondents whether they voted in the most recent Presidential election, as for their expectations of inflation over the next twelve months, and ask them several objective questions to test their knowledge. These questions are placed at

the end of the survey so that respondents do not feel discouraged from answering subsequent questions if they have difficulty answering these. The first test question asks, "Who is the current Chair of the Board of Governors of the Federal Reserve System?" The choices are: Jerome Powell, Alan Blinder, and Alan Greenspan. About 79% of respondents in 2021 and 73% in 2022 correctly selected Powell.

The second and third test questions are identical to numeracy questions from the Federal Reserve Bank of New York's Survey of Consumer Expectations (SCE). One asks, "If the chance of getting a disease is 10 percent, how many people out of 1,000 would be expected to get the disease?" Respondents type any answer into a text box. The other asks, "Imagine the interest rate on your savings account was 1% per year and inflation was 2% per year. After one year, how much would you be able to buy with the money in this account?" The choices are: more than today, exactly the same, or less than today. About 66% of our respondents answered both of the numeracy/financial literacy questions correctly, and are characterized as highly numerate.

Finally, we ask respondents if there is anything they would like to tell us about the survey. They can type a response into a text box.

D. Inflation News and Expectations

From the first to the second wave of our survey, inflation in the United States increased substantially. Year-over-year consumer price index ("CPI") inflation was 4.9% in May 2021 and 8.2% in April 2022.

The respondents to our survey, in both waves, were aware of high inflation, and their concern about it seems to have increased from the first to the second wave. About 60% of respondents in 2021 and 70% in 2022 reported hearing news about inflation in the past few days.

Respondents in both waves also expected the high inflation to continue. In 2021, the mean respondent expected 4.6% inflation over the next twelve months. By 2022, the mean respondent expected 6.0% inflation over the next twelve months.[152] This increase in expectations is highly statistically significant.

These results are in line with our expectations about the impact of very high and rising inflation on consumer expectations. They are also in line with major consumer surveys, such as the Michigan Survey of Consumers and the Survey of Consumer Expectations, which also exhibit a rise in inflation expectations over this time period. In June 2022, Federal Reserve Chairman Jerome Powell pointed to this rise in inflation expectations as a major factor driving the decision to raise interest rates by seventy-five basis points: "it was quite eye catching and we noticed that . . . one of the factors in our deciding to move ahead with 75 basis points today was what we saw in inflation expectations."[153]

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152. To compute these means, we dropped outlier inflation expectations of greater than or equal to 30% or less than or equal to -30%.

153. Jerome Powell, Chairman, Fed. Rsrv. Sys., Press Conference (June 15, 2022), https://perma.cc/LM79-MTBZ.

E. Changing Confidence and Beliefs

As inflation expectations have risen, and news about high inflation has become more prevalent, confidence in the Fed has declined. Figure 1 summarizes respondents' confidence in the Fed in 2021 and 2022. In 2021, 18% of respondents had a great deal of confidence in the Fed, and another nearly half had a fair amount of confidence. By 2022, only 11% had a great deal and 38% a fair amount of confidence in the Fed. These declines in confidence are highly statistically significant, even when controlling for respondents' demographic characteristics.

Moreover, respondents with higher inflation expectations are less likely to report having a fair amount or a great deal of confidence in the Fed. In particular, for respondents in the 2022 survey wave, each percentage point increase in expected inflation is associated with a two percentage point reduction in the probability that the respondent reports a fair amount or a great deal of confidence.[154]

As respondents' inflation expectations have risen and confidence in the Fed has declined, their beliefs about the role of the Fed have changed. Figure 2 summarizes the share of survey respondents by year who believe that the Fed should have primary responsibility for various policy areas.

For every policy area other than price stability, the share of respondents who want the Fed (rather than elected officials or others) to be primarily responsible has declined. The declines are most notable for climate policy and gender inequality. The share who wanted the Fed responsible for climate policy fell from 13% to 3%, and for gender inequality, the share fell from 10% to 2%.

In 2021, 22% of respondents wanted the Fed to have primary responsibility for economic inequality, compared to 15% in 2022. The share of respondents who want the Fed to have responsibility for tax policy has also declined, but the fact that it is above 20% in both years points to a lack of public knowledge about the role of the Fed and the distinction between fiscal and monetary policy.

Results for employment are interesting since the Fed, unlike most other central banks, has a dual mandate that includes employment on equal grounds with price stability. Only 18% of respondents in 2021 and 11% in 2022 want the Fed to have primary responsibility for employment, however. Most—49% in 2021 and 63% in 2022—think that elected officials should have responsibility.

Only for price stability do a clear majority of respondents—about 60% in both years—believe that the Fed should be primarily responsible. Still, it is worth noting that a sizeable minority of respondents do not believe that the Fed should have primary responsibility for price stability. Again, this points perhaps to a simple lack of knowledge about the Fed or, more troublingly, to a lack of confidence in the Fed's ability to perform one of its most basic functions.

The declining confidence in the Fed, shown in Figure 1, and the reduced appetite for Fed responsibility over a variety of policy areas, shown in Figure 2, are related. Figure 3 shows the share of respondents who believe that the Fed should have responsibility for each policy area, for respondents with a fair amount or a great deal

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154. This is based on a regression of a binary variable indicating that the respondent has a fair amount or great deal of confidence in the Fed on expected inflation and controls for the respondent's education, gender, numeracy, and income.

of confidence in the Fed compared to those with little to no confidence. Respondents with greater confidence in the Fed are more likely to believe that the Fed should be responsible for various policies, especially climate policy and inequality.

F. Information and Politicization

Would respondents' beliefs about the legitimate role of the Fed change if they had more information about the Fed's mandate, or more information about how Federal Reserve policymakers view their role? Our randomized information treatments allow us to consider this question using regression analysis.

For each of the policy areas shown in Figures 1 and 2, we construct a binary variable indicating that the respondent believes the Fed should be responsible for that policy area. We regress the binary variable on another binary variable indicating that the respondent received the mandate treatment, and on respondent characteristics: college education, gender, numeracy, income, confidence in the President, and survey wave.

Regression results are in Table 1. We find that providing information about the Fed's mandate reduces the probability that a respondent wants the Fed to be responsible for gender inequality by about four percentage points and increases the probability that the respondent wants the Fed to be responsible for price stability by about five percentage points. Effects for other policy areas are not statistically significant. These results indicate that information about the Fed's legislative mandate can have a moderate effect on beliefs about the appropriate role of the Fed and can align public beliefs with the legislative mandate.

In similar regressions, we also include variables indicating that the respondent received the treatments derived from Federal Reserve speeches about climate change or inequality. These do not have a statistically significant effect on respondents' opinions about the Fed's responsibility for climate change or inequality.

The regression results in Table 1 also reveal interesting heterogeneity in beliefs among different types of respondents. The most important characteristic driving beliefs is the respondent's numeracy. Highly numerate respondents (i.e., those who answer the financial literacy questions correctly) are considerably less likely to want the Fed to be responsible for any policies except price stability. For example, they are seventeen percentage points less likely to favor Fed responsibility for climate policy. And they are twenty-four percentage points more likely to favor Fed responsibility for price stability. High-income consumers likewise are seventeen percentage points more likely to favor Fed responsibility for price stability.

Controlling for numeracy and income, college-educated respondents are more likely to favor Fed responsibility for climate policy, gender inequality, and employment. This may reflect a greater willingness of college-educated respondents to rely on technocratic expertise to address social problems.

Finally, respondents who have a fair amount or a great deal of confidence in the President (that is, who are more likely Democrats) favor greater Fed responsibility for *all* policy areas. That is, people who trust in the current administration also trust in its administrative agencies. This is despite the fact that the Fed is a non-partisan institution, and that Chairman Jerome Powell was first appointed by Republican President Donald Trump and then reappointed by Democratic President Joe Biden. It

is possible that the contentious appointment and confirmation process for several members of the Board of Governors may have contributed to public perception of the Fed as a partisan institution.

In summary, our results show us that there is a lot of disagreement among the public about what the Fed should do versus what elected officials should do, and in how much people trust and know about the Fed and its policies. Beliefs and trust vary in some systematic ways with respondents' characteristics. And, quite strikingly, they can change very quickly—in the case of our survey, public support for an "activist" Federal Reserve fell sharply in just under a year of high inflation. Moreover, telling people about the Fed's mandate makes only a small impact on these beliefs—they seem instead to be strongly tied to political views and demographics. Therefore, even if people were well informed about the Fed's mandate, its democratic legitimacy will always be rather tenuous—it will face pressure to do more, and its actions will be politicized. As Part III will explore, these findings counsel the Fed to stay firmly in its lane, so that its legal (and democratic) legitimacy remains firm.

Table 1 Regressions of opinions about policy responsibilities of the Fed on mandate treatment and respondent characteristics.

Standard errors in parentheses. * p < 0.10, ** p < 0.05, *** p < 0.01

	(1) Climate	(2) Econ. Ineq.	(3) Gender Ineq.	(4) Taxes	(5) Employment	(6) Prices
Mandate Treatment	-0.01	0.00	-0.04**	0.01	0.03	0.05*
	(0.01)	(0.03)	(0.01)	(0.03)	(0.02)	(0.03)
College	0.06***	0.03	0.07***	-0.07*	0.06***	-0.06**
	(0.01)	(0.03)	(0.01)	(0.04)	(0.02)	(0.03)
Male	-0.00	-0.08***	-0.02	-0.08***	-0.01	-0.06**
	(0.02)	(0.03)	(0.01)	(0.03)	(0.02)	(0.03)
High numeracy	-0.17***	-0.13***	-0.10***	-0.07**	-0.14***	0.24***
	(0.02)	(0.03)	(0.02)	(0.03)	(0.03)	(0.03)
Income>$100,000	-0.03	0.04	-0.02	0.01	-0.00	0.17***
	(0.02)	(0.04)	(0.02)	(0.04)	(0.03)	(0.04)
Income<$50,000	-0.00	-0.02	0.02	-0.03	0.05**	-0.05*
	(0.02)	(0.02)	(0.02)	(0.03)	(0.02)	(0.03)
Conf. in President	0.03*	0.06**	0.05***	0.08***	0.08***	0.06**
	(0.01)	(0.03)	(0.01)	(0.03)	(0.02)	(0.03)
2022	-0.04***	-0.02	-0.03***	-0.03	-0.01	-0.03
	(0.01)	(0.03)	(0.01)	(0.03)	(0.02)	(0.03)
Constant	0.19***	0.27***	0.10***	0.38***	0.13***	0.42***
	(0.03)	(0.04)	(0.02)	(0.05)	(0.03)	(0.05)
Obs.	1584	1584	1584	1584	1584	1584

III. Implications: The Public, the President, and Elites

Our empirical findings suggest that if the Fed adopts new goals that require a stretched interpretation of its mandate, like mitigating climate change or inequality, such new policy action could erode the three conditions of its ongoing legitimacy, as set out in Part I. Overall, the findings suggest that a potential outcome of a Fed expansion would be to increase the gulf between ordinary households and financial and economic elites, to permanently increase the Fed's role in American economic life, and ultimately increase polarization in America. Suffice it to say that any of the outcomes would trigger—if not exacerbate—a Fed legitimacy problem.

A. The Public and the "Great Divide"

In June 2021, to mark his last day as chief economist at the Bank of England, Andy Haldane lamented the "great divide" that exists between what households know and understand about central banks' functions and tools and the economic elite.[155] Our results suggest this divide also includes knowledge about the Fed's lawful authority and responsibility—and that this can detract from its legitimacy.

A lack of understanding among the public about the Fed's goals and tools has long worried central banking experts. Nobel prize-winning economist Robert Shiller wrote in 1997, "[t]here will probably always be a communications gap between economists and the public . . . But there appears to be rather more of a gap than most of us would have expected."[156] Shiller's sentiment, widely shared by Fed leaders at the time and in the years that followed, led to significant initiatives to improve the quantity and quality of the Fed's communications with the public, as discussed at length in Part I.[157] And, again, these communications came to form an important mechanism of accountability and, in turn, a key condition of Fed legitimacy.

There is significant literature discussing the reasons why the Fed's communication may, contrary to the Fed's intentions, have a difficult time reaching the public.[158] Usually, this research concludes that the solution is for the Fed to make its communications with the public even more clear, catchy, entertaining, and relevant (or to focus on improving financial literacy).[159] Central banks are striving to adapt to the age of new media, in which competition for audience attention is intense.

Our findings reveal a new kind of shortfall in the Fed's communications—that is,

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155. See Andrew Haldane, Exec. Dir. and Chief Economist of the Bank of Eng., The Great Divide (May 18, 2016) (transcript on file with the Bank of Eng.). Drawing on Joseph Stiglitz' conceptualization of the term, Haldane remarked on the chasm between "the views of financial insiders and outsiders, between the perceptions of producers and consumers of financial services, and between the silent majority who buy and the vocal minority who sell financial products, between the echo chamber of the elites and the voting chamber of wider society."
156. Robert Shiller, Why Do People Dislike Inflation?, in Reducing Inflation: Motivation and Strategy 13-69, 59 (Christina Romer & David Romer eds., 1997).
157. See supra Part I.A.
158. See, e.g., Binder, supra note 68.
159. David Bholat, Nida Broughton, Alice Parker, Janna Ter Meer & Eryk Walczak, Enhancing Central Bank Communications with Behavioural Insights (Bank of Eng., Staff Working Paper No. 750, 2018).

the failure to explain intelligibly the Fed's legal framework and how it justifies the adoption of new goals or characterizes new policy actions as consistent with existing statutory goals. One principal implication of our data is that there is, presently, a low level of knowledge among the American public about the Fed's (lawful) role in the American economy and society more broadly. In particular, one of the major findings from the data is that people generally do not have deep knowledge about what the Fed's legal goals—that is, mandates—are. People think they know a moderate amount about the Fed. The mean respondent rates their knowledge of the Fed as a 3.9 on a scale of one to seven. Less than six percent of respondents rated their knowledge at a seven. Nearly half rate their knowledge at three or lower.

Meanwhile, only thirty-five percent know the Fed's inflation target, which is perhaps the most crucial part of how the Fed tries to communicate the pursuit of its mandate to the public. The idea and justification for independence for the monetary authority aspect of the central bank have not gotten fully across to households. This data begs the question: what does acceptance of authority mean in a democratic society if the people do not know what they are accepting (or on what legal basis)?

The shortfall of communications about the Fed's mandate—and how it stays within its lane (or not)—implicate its legitimacy in three important ways. First, the data suggests that the people's acceptance of the Fed's authority is passive. We might thus look at the Fed's legitimacy much as Professor Fallon described the Court's: the "public, being little informed about the [Fed's] practices, has not mounted a revolt," as such, "the people . . . have given the stamp of approval" merely by "leaving it alone."[160] Arguably, this passive form of legitimacy will only cohere while the institution plays by the rules the legislature has set for it. That may mean that the Fed's legitimacy will be most tenuous in moments where the Fed expands, experimenting beyond its core mandate—and even more specifically when the Fed's expansion immediately precedes a period of above-target inflation. Possibly, if the people come to learn that their tacit trust—their sleepy acceptance—has led them to be hoodwinked, that "reservoir of goodwill" could quickly be depleted.[161]

Second, this data about legal-mandate knowledge shortfalls may confirm, as we've suggested in Part I, that adopting subjective goals may be problematic for the Fed's legitimacy. Pursuing more amorphous goals—those that are less objectively measurable—could exacerbate this Great Divide and mute the public's ability to hold the Fed accountable. While one can observe ("check") inflation and employment figures, whether the climate is improved, or inequality reduced thanks to the Fed's actions is much more difficult to judge. This is particularly the case given that the Fed is a paradigm of a technocratic agency, one that is supposed to act on a social scientific basis; the failure to do so would be likely to harm its relationship with the public.[162]

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160. Fallon, supra note 27, at 1826 (quoting Charles L. Black, Jr., The People and the Court: Judicial Review in Democracy 210 (1960)).

161. "There is little doubt that public trust in policy-making institutions, not only central banks, is of fundamental importance for their long-term success. This is even more so for independent central banks, which ultimately derive their democratic legitimacy from the public's trust in them." Ehrmann et al., supra note 134, at 782..

162. See Louis J. Virelli III, Science, Politics, and Administrative Legitimacy, 78 Mo. L. Rev. 511 (2013) (discussing the differences in what the public expects as legitimate policy action

Third, at the very least, it appears that the Fed has not explained to the public why it believes it has the legal authority to adopt new goals—or to characterize new policy actions in pursuit of already mandated goals. Explaining the basis of legal legitimacy for new action would seem an essential, yet presently ineffective, part of the Fed's communications strategy.[163] The Fed must also, in concert, explain to the public the policy frameworks it believes will be effectively deployed against a new problem or in pursuit of a new goal, insofar as democratic legitimacy depends in part on solving problems as promised.[164]

B. The President and Fed Wars

As discussed in Part I, the Fed's power expands—necessarily—during an economic crisis. In describing the Fed's new role after the 2008 global financial crisis, one leading Fed expert remarked:

> In ways that the public and politicians had never before appreciated, that weekend, and the months that followed, would reveal that the Federal Reserve had become *a fourth branch of government*, nearly equal in power to the executive, legislative, and judicial branches, though still subject to their constitutional authority if they chose to assert it.[165]

The public likely accepts a larger crisis-era role for the Fed because it perceives it as a necessary reaction to an *emergency*. Precisely as then-Fed Chair Ben Bernanke framed the situation in 2008, "We came very, very close to a global financial meltdown, a situation in which many of the largest institutions in the world would have failed, where the financial system would have shut down, and . . . in which the economy would have fallen into a much deeper and much longer and more protracted recession."[166] That people accept that the Fed's power is at a nadir during a crisis is, generally, supported by the view that "if a society faces an existential threat, actions taken in response may strike people as inherently legitimate, no matter how precipitate."[167]

This observed reality of Fed power in crisis mixes uncomfortably with our finding that people who support the President (and presumably, his power) appear more likely to prefer a Fed that expands into new socially charged areas such as climate change and inequality. (See Table 1). The connection between support for the President

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for a technocratic body like the EPA versus an agency with a broader expertise mandate like the State Department).

163. See Ulfstein, supra note 50, at 290 ("the treaty bodies' legitimacy depends on the extent to which their activities conform to accepted methods of treaty interpretation. However, they have been criticized for too expansive and dynamic interpretations of the substantive obligations.").

164. See Dellmuth et al., supra note 44, at 627.

165. Wessel supra note 24, 3-4.

166. Id.

167. Philip A. Wallach, Introduction: Law, Legitimacy, and Crisis Government, in To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis 1, 9 (2015); see also Posner, supra note 125 (generally arguing that the Fed can expand its powers during a crisis without the loss of legitimacy).

and support for an expanded Fed role might suggest that those who support the President today may also favor a less presidentially independent Fed. For the reasons discussed in Part I, that alone could undermine legitimacy over the longer term by increasing the politicization of the Fed.

A less presidentially independent Fed could directly impact the elasticity of the Fed's power (condition three to the Fed's legitimacy). Once we chip away at the Fed's special insulation from the President, we may be confronted with a one-way ratcheting Fed power, in lieu of an elastic one. There is ample constitutional law precedent establishing a President's plenary power in an emergency, and separate strands of administrative law supporting a "unitary" executive with near plenary control over the administrative state.[168] Taking these precedents and academic views together could implicate a very strong presidential grip on the Fed in times of crisis or emergency.

The ability to command(eer) the Fed could be quite alluring for a President keen to direct the supply of credit to certain industries and not others, or to monetize growing federal deficits. This, in turn, may well tempt a President to declare various "emergencies" at more intervals and more broadly defined, thereby giving the Chief Executive a hook into the Fed. The result: a Fed on a relatively constant wartime footing.[169] Once seized by a President, the power to direct the Fed's arsenal of monetary policy tools is unlikely to be returned to the status quo (i.e., leveled back down).

There could be other knock-on effects from a more politicized, presidentially controlled Fed—including a more fractious appointment process for Fed governors; contentious presidential efforts to remove Fed Chairs for policy disagreements; or more frequently shifting monetary policies to appease the President in power, leading to economic policy by whiplash.[170] A permanently larger and more powerful Fed could also, inadvertently, lead to more complex economic policy that is less effective, shorter-sighted, clumsy, and even more poorly understood—a new "kludgeocracy" of the Fed.[171] Few, it would seem, would gain from such politicizing of the Fed.[172]

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168. See Elena Kagan, Presidential Administration, 115 Harv. L. Rev. 2245 (2010) (explaining the theory of the unitary executive); see also Steven G. Calabresi & Christopher S. Yoo, The Unitary Executive: Presidential Power from Washington to Bush 17-20 (2008) (noting a historical trend of the President executing the law through the administrative state and that, despite some judicial restraints, executive emergency power remains relatively expansive).

169. "A new president of any party might well inventory the accumulated powers—and claims of power—and decide to try hanging on to them. Presidents do not easily surrender authority, even if they recognize that the authority was illegitimately claimed." John P. MacKenzie, Absolute Power: How the Unitary Executive Theory is Undermining the Constitution 57 (2008).

170. See Christina Parajon Skinner, Presidential Pendulums in Finance, 2020 Colum. Bus. L. Rev. 533 (2020) (arguing that presidential control of financial regulatory agencies is likely to be financially destabilizing).

171. See Steve M. Teles, Kludgeocracy in America, 48 Nat'l Affs. 93 (2013) (urging that the complexity of government, owing to its size and morass, be our nation's biggest concern regarding government).

172. Some see the impulse to expand the Fed's remit as a byproduct of the failures of the processes of democratic representation. It may well seem that when democratic institutions like Congress are relatively ineffective and unresponsive, it more expedient and effective to accomplish goals through technocrats. But that further undermines the democratic institutions, and makes people increasingly dissatisfied with the government

C. Elites and Social Media

Our findings also show a connection between social media and Fed activism or expansion. In particular, consumers who use social media as a major source of economic news are much more likely than other consumers to wish for the Fed, rather than elected officials, to take primary responsibility for activist issues like climate (16% of social media users versus 4% of non-users) and gender inequality (11% of social media users versus less than 1% of non-users).

There is significant literature discussing how news outlets mediate the legitimacy of important institutions, like the Supreme Court.[173] This is in part a function of the "Great Divide" discussed above.[174] The less people understand about an institution, directly from its source, the more they must rely on the media to intermediate—and shape—their views. As Supreme Court scholar Michael Zilis has remarked in regard to the Court, "[f]ew Americans take the time to read the written opinions released by the justices, and many fewer still have the opportunity to sit in the courthouse and hear the announcements of decisions."[175]

Social media is known to be polarizing. Accordingly, we can expect that social media will shape the public's views about the Fed in divisive ways should the public come to rely in substantial measure on social media for their perceptions and beliefs about the goals the Fed should pursue.[176] In terms of legitimacy, precisely because social media may polarize, it may make it difficult for society to form the kind of consensus around the Fed that the institution requires for legitimacy. The connection we identify between social media and Fed legitimacy thus has potentially far-reaching implications that warrant future research.

Finally, our findings also suggest that a Fed that expands outside its existing mandates, into more socially divisive areas, could entrench elitism. Our results show that college-educated respondents—those most likely to be socioeconomic elites—are more likely to favor an expansive Fed that strays outside its existing mandate to new social or environmental related areas. Most strikingly, respondents with a college degree are many times more likely than respondents without a college degree to favor Fed responsibility for gender inequality and climate change.

To the extent this finding suggests that a larger role for the Fed is favored by well-educated elites, the Fed could unwittingly increase perceptions of elite control of government by taking steps in these new directions. Ironically, but unfortunately, such result could subject the Fed to the criticism mounted in Andrew Jackson's day—that an elitist central bank does not best serve the People.

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overall. See Binder, supra note 18; Skinner & Salib, supra note 86.

173. See Michael Zilis, The Limits of Legitimacy: Dissenting Opinions, Media Coverage, and Public Responses to Supreme Court Decisions (2015).

174. See supra Part III.A.

175. Zilis, supra note 174, at 5-8.

176. See Abhishek Samantray, Christos A. Makridis & Christos Nicolaides, Collective Attention and Politicization of Information: Evidence from News Articles on Climate Change (Working Paper, 2021), https://perma.cc/39XB-E2JM (showing that news media uses politicized framing, contributing to the surge in polarization in recent years).

Conclusion

This Article has attempted to chart a concrete course for the Fed toward restoring and then retaining its legitimacy, which has been bruised by a combination of high inflation and expansion into areas much of the public views as political. In particular, the Article combined legal with macroeconomic methods to suggest certain conditions of the Federal Reserve's ongoing legitimacy. It then tested whether those conditions hold against an expansion of the Fed's role. Overall, our findings suggest that if the Fed continues to expand it will likely contribute to polarization in America and entrench elitism in the economy—undermining its legitimacy. It may also, through such expansion, inadvertently cede power to the President, with unintended consequences for the balance of power between the Executive and Legislative branches. Ultimately, the Article sheds light on the reasons why many questions of Fed legitimacy are ultimately grounded in unanswered questions of constitutional and administrative law.