

PROCEDURAL JUSTICE, INSTITUTIONAL LEGITIMACY, AND THE ACCEPTANCE OF UNPOPULAR U.S. SUPREME COURT DECISIONS: A REPLY TO GIBSON

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Gibson (1989) questions whether the Supreme Court's ability to legitimate unpopular policies is based on public views that the Court is a fair decisionmaker. His claim is based on his analysis of a survey examining the ability of the Supreme Court to gain acceptance of the right of an unpopular political group to demonstrate. A reanalysis of Gibson's data using a model allowing for both direct and indirect effects of public views about the fairness of court decisionmaking procedures on acceptance does not support Gibson's conclusion that procedure has no influence on acceptance. Our results indicate that public views about the fairness of Supreme Court decisionmaking procedures have an indirect effect on acceptance through their influence on public views about the Court's legitimacy and support the suggestion of a number of studies that the legitimacy of both local and national legal institutions, and the willingness to accept their decisions, are influenced by views about the fairness of their decision-making procedures.

A central tenet about U.S. legal culture is that Americans are more willing to accept unpopular decisions if those decisions are legitimized by the courts, in particular the U.S. Supreme Court (Dolbeare and Hammond 1970; Friedman 1975; Gerstein 1970; Murphy and Tanenhaus 1969; Scheingold 1974). Because of its legitimizing ability, the Supreme Court has been able to gain acceptance for a wide variety of initially unpopular public policies, ranging from mandating school desegregation and school prayer to limiting criminal prosecutions through the exclusionary rule.

It has been suggested that a key factor underlying the legiti-

The data used in this article were collected by the National Opinion Research Center of the University of Chicago. They include the main 1987 General Social Survey data and the results of an additional interview funded by a National Science Foundation grant to James Gibson. The authors would like to thank Norman M. Bradburn and Tom W. Smith, for help in obtaining the 1987 GSS main study data, and James Gibson, for providing the data from the additional interview. This reanalysis is based almost entirely on material from the additional interview.

LAW & SOCIETY REVIEW, Volume 25, Number 3 (1991)

macy of the U.S. Supreme Court is the public belief that the court makes decisions in a fair way (Engstrom and Giles 1972; Murphy and Tanenhaus 1969; Sarat 1975; Scheingold 1974). This suggestion accords with the more general argument that the legitimacy of all government institutions is linked to the belief that those institutions make decisions following fair procedures, that is, to "diffuse" system support (Easton 1965, 1968, 1975; Gamson 1968; Kelman 1969; Parsons 1963, 1967). As Murphy and Tanenhaus suggest (1969:275), the procedural or diffuse system support hypothesis indicates: "People who believe specific decisions are wrong, even wrongheaded, and individual judges unworthy of their office" will continue to accept judicial decisions "if they respect the court as an institution that is generally impartial, just, and competent."

The argument that people are more supportive of authorities if they believe that the authorities make their decisions fairly has recently been supported by an extensive empirical literature on procedural justice. That literature demonstrates that the belief that authorities are following fair procedures is a key component of their legitimacy (see Lind and Tyler 1988 for a review). In addition, recent research demonstrates that legitimacy influences people's willingness to accept both legal rules (Tyler 1990) and the decisions of legal authorities (Tyler and Lind in press).

Although the procedural justice literature supports the suggestion that procedural justice matters, that literature is almost totally concerned with local authorities and institutions with which people have personal experiences—courts, the police, managers, etc. Much less attention has been paid to evaluations of national political and legal institutions such as the president, Congress, and the Supreme Court (for exceptions see Tyler, Rasinski, and McGraw 1985; Rasinski 1988; and Rasinski and Tyler 1987).

Gibson (1989) has recently questioned whether the Supreme Court's ability to legitimate unpopular policies is based on public views that the Court is a fair decisionmaker. Based on his analysis of a national probability sample, Gibson concludes that the U.S. Supreme Court does elicit popular acceptance of unpopular policies, an acceptance linked to its legitimacy. However, he questions whether that legitimacy is procedurally based, and instead suggests that "perceptions of institutional procedure have little impact on compliance" (p. 469).

Our purpose here is to reexamine whether the Supreme Court's ability to legitimate unpopular actions is linked to the perceived fairness of its decisionmaking procedures. The reply is based on a secondary analysis of the 1987 General Social Survey, including the additional questions Gibson used in his work.

The reanalysis focuses specifically on respondents' reactions to decisions made by the U.S. Supreme Court. While decisions made by other governmental bodies are also examined in the data set, measures of legitimacy only exist for the U.S. Supreme Court, so it

is the focus of this reanalysis. In addition, this reanalysis focuses on only one type of behavior: willingness to break the law. While other behaviors, such as working in future elections to change the law, are also included in the data set, the key goal of seeking court legitimacy for a demonstration is to lessen others' willingness to break the law to prevent that demonstration.

This analysis tests the hypothesis that by influencing legitimacy, procedural justice influences acceptance behavior indirectly. In other words, it hypothesizes that there is an indirect relationship between procedural justice and decision acceptance.

The indirect influence hypothesis is based on the findings of two recent studies. Tyler (1990) studied people's reactions to experiences with police officers and judges and found that the legitimacy of those authorities influenced whether people followed laws. He also found that the procedural justice of the authorities influenced their legitimacy. However, he found no direct relationship between procedural justice and rule-following behavior. Similarly, Tyler, Casper, and Fisher (1989) examined the influence of experiences with the felony case disposition process on attitudes toward legal authorities, law, and government. They found that attitudes about the legitimacy of legal authorities and government influenced attitudes about the legitimacy of law. In addition, procedural justice influenced attitudes about the legitimacy of legal authorities and government. However, procedural justice had no direct influence on attitudes toward law. In both cases, it influenced more general attitudes and behaviors indirectly, by influencing more proximal attitudes. Thus, we have hypothesized that judgments about the procedural justice of Supreme Court decisionmaking will influence decision acceptance indirectly.

Gibson (1989) focuses on the direct influence of procedure on acceptance, and does not test the possibility of indirect influences. Gibson (*ibid.*, p. 488) does present an analysis which includes both procedural justice and legitimacy. However, his model does not allow indirect influence to be estimated. Instead he simultaneously includes both procedural justice and legitimacy—two variables that are possibly causally linked—as independent variables in a single regression equation. This removes any causal influence of procedural justice on legitimacy from his results.¹

METHOD

Respondent

This reanalysis is based on the two data sets Gibson used in his analysis. The first is a subset of the General Social Survey conducted by the National Opinion Research Center at the University

¹ This problem is further compounded when the four items representing procedural justice (which are correlated and should be combined into a single index) are entered as four separate indicators. Again, this removes their joint influence from the equation.

of Chicago during the spring of 1987. That study used a national probability sample, with a completion rate of 75 percent. The total sample size was 1,466 (Gibson 1989). A subset of the original sample was contacted for a reinterview. Of that group, 1,267 were successfully reinterviewed. Sampling for the reinterview oversampled nonwhites and selected male and female respondents with equal frequency (see *ibid.* for sampling details). The analyses reported here utilize responses to questions asked on both interviews among the subset of the reinterview respondents who were asked questions about the U.S. Supreme Court ($n=636$). The analyses reported here are for the weighted sample used by Gibson ($n=606$).

Questionnaire

Behavior

Many of the questions used the respondent's "most disliked group" as their referent. For those questions respondents were asked to indicate which political group in the United States they disliked the most. They were then asked a series of questions concerning their willingness to allow that group to engage in various political activities. One activity was "hold public rallies in our city." Answers to this question index abstract support for freedom to demonstrate. Respondents were later asked to consider a specific situation in which that group wanted to hold a demonstration in their neighborhood. They were asked how likely was it that they would "try to get people to go to the demonstration and stop it in any way possible, even if it meant breaking the law?" (likely 14 percent), and "How likely is it that you would try to get the group not to hold its demonstration, even if it meant doing some things against the group that are illegal?" (likely 14 percent). These two items were combined to form a single scale of initial behavioral disposition ($\alpha=.84$).

Respondents were then asked to imagine that the U.S. Supreme Court had "ruled that the demonstration should be allowed to take place" and how likely they would then be to "try to get people to go to the demonstration and stop it in any way possible, even if it meant breaking the law" (likely 12 percent). This item was used to index postdecision behavioral disposition.

The Legitimacy of the U.S. Supreme Court

Legitimacy was assessed using a five-item measure. Respondents were asked to respond to a series of statements:

- If the United States Supreme Court continually makes decisions that the people disagree with, it might be better to do away with the Court altogether.
- People should be willing to do everything they can to

make sure that any proposal to abolish the Supreme Court is defeated.

It would not make much difference to me if the U.S. Constitution were rewritten so as to reduce the powers of the Supreme Court.

The power of the Supreme Court to declare acts of Congress unconstitutional should be eliminated.

The right of the Supreme Court to decide certain types of controversial issues should be limited by the Congress.

These five items were combined into a single scale of legitimacy ($\alpha = .72$) using the same items Gibson used. In addition, in combining items, the researchers weighted each by its factor loading (see Gibson and Caldeira 1990).

The Procedural Justice of U.S. Supreme Court Decisionmaking

Respondents also evaluated U.S. Supreme Court decisionmaking procedures. They responded to four items:

The United States Supreme Court seldom considers the views of all sides to an issue before making its decisions.

The United States Supreme Court usually gives interests an opportunity to express their views before making its decisions.

The members of the United States Supreme Court usually make decisions only after they assemble all the relevant information on an issue.

You can usually count on the Supreme Court to make decisions in a fair way.

These four items were combined into a single indicator of procedural justice ($\alpha = .72$). In constructing this scale, the researchers weighted each item by its factor loading.

RESULTS

The key hypothesis is that judgments about the procedural justice of U.S. Supreme Court decisionmaking indirectly influence the willingness to accept court decisions through their influence on judgments about the legitimacy of the Supreme Court. This hypothesis was tested using causal modeling.

The causal model was tested using structural equation modeling (LISREL-VII, Joreskog and Sorbom 1988). To maintain consistency with Gibson (1989) we used two-stage least-squares estimates. The results of the causal modeling analysis are shown in Figure 1. All paths which are significant at the $P < .01$ level or greater are shown. The results support the indirect influence hypothesis. Procedural justice influences legitimacy which, in turn, influences behavior. As predicted, we found no significant direct influence of procedural justice on acceptance. Hence, these data suggest that the legitimacy of U.S. Supreme Court decisions is

linked to the judgment that those decisions are made in a fair way.²

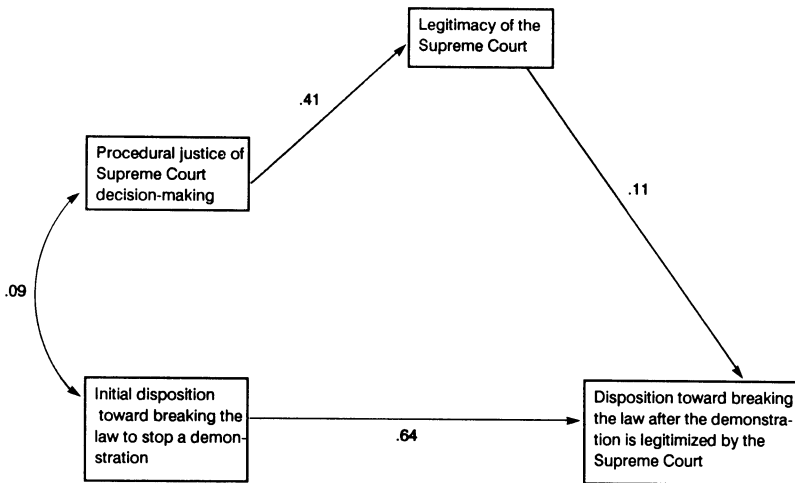


Figure 1. Procedural justice, legitimacy, and decision acceptance.

DISCUSSION

The conclusion of this reanalysis is that procedural justice strongly influences institutional legitimacy and, through it, the acceptance of institutional decisions. Like Gibson, we find no significant relationship between procedural justice and acceptance ($r = .05$, n.s.). However, an expanded analysis that explores the effect of procedural justice on institutional legitimacy finds a very strong influence ($r = .42$, $p < .001$). In addition, legitimacy influences acceptance ($r = .15$, $p < .001$).

The influence of procedural justice is particularly striking because agreement or disagreement with Supreme Court decisions has little influence on legitimacy ($r = .13$, $p < .05$).³ As predicted the

² Given that these indirect influences exist, why did Gibson find no direct influence of procedural justice on acceptance? The correlation between procedural justice and legitimacy is $r = .42$. The correlation between legitimacy and acceptance is $.15$. This should lead to an observed direct correlation between procedural justice and acceptance of $.06$ (i.e., $.42 \times .15$). The observed correlation is $.05$. Hence, the low level of direct correlation between procedural justice and acceptance is at the level that would be predicted based on the assumption that the relationship only reflects an indirect association.

³ To assess agreement with decisions, respondents were asked to indicate whether "in general" the Supreme Court is "too liberal, too conservative, or about right in its decisions." This scale was folded to create two categories; about right (61 percent) and too liberal/conservative (39 percent). This item, which indexed agreement with court decisions, was utilized because it is the only such item on the survey. However, its interpretation is ambiguous. The term "in general" makes it unclear not only what time period is of concern but also what issues are being considered.

legitimacy of the U.S. Supreme Court is based on the belief that it makes decisions in fair ways, not on agreement with its decisions.

The findings of this reanalysis support a model of the type previously identified by Tyler (1990) and Tyler, Casper, and Fisher (1989). That model suggests that evaluations of the fairness of decisionmaking have an indirect influence on behavioral reactions to institutional decisions. If people judge procedures to be fair, they evaluate the institutional legitimacy of authorities more highly. That higher legitimacy, in turn, enhances the ability of the organization to secure compliance with decisions and rules.

Our results suggest that, as widely suggested in theories about the U.S. Supreme Court, (1) when people think that the Supreme Court makes decisions following fair procedures, they regard it as a more legitimate institution and (2) when the court is regarded as a more legitimate institution, people are more accepting of its decisions

In their influential discussion of the Supreme Court Murphy and Tanenhaus (1969) questioned whether the Court had the characteristics needed to legitimize decisions. They found that very few citizens were knowledgeable about the Court, were aware of the Court's constitutional role, and regarded the Court as an impartial and competent decisionmaker. In fact, only 13 percent of their national sample met all three of their criteria for citizens with sufficient knowledge about the Court and suitable attitudes toward Court decisionmaking to accept the Court's decisions as legitimate. In contrast to this fairly bleak picture of the legitimizing power of the Supreme Court, our findings suggest that the Court does have legitimizing power.

In one respect the results of this study support those of Murphy and Tanenhaus. Their study found: "Despite the unpopularity of its decisions in recent years, the Court still retains a substantial reservoir of diffuse support" (*ibid.*, p. 291), that is, there is still substantial belief that the Court makes decisions in a fair way. They classified 37 percent of their sample as positive on diffuse support, with only 22 percent negative. The people interviewed in the NORC study also hold positive views about court decisionmaking procedures. Forty-five percent think that the Court gives all interested citizens a chance to express their views before making decisions, and only 28 percent disagree.⁴ Seventy-two percent think that the Court only makes decisions after assembling relevant information; only 7 percent disagree. Only 24 percent feel that the Court "seldom" considers the views of all sides before making decisions; 59 percent disagree. Finally, 71 percent believe that they can usually count on the Court to make decisions in a fair way; only 10 percent disagree. In other words, respondents

⁴ The percentages do not add up to 100 percent because "uncertain" responses are excluded.

continue to believe that the Supreme Court makes decisions using fair procedures.

The results are also in accord with the widespread findings of the procedural justice literature. Studies of legal trial procedures (e.g., Lind et al. 1980; Thibaut and Walker 1975), studies of other nontrial procedures used in resolving legal disputes, such as plea bargaining (Houlden 1980; Casper, Tyler, and Fisher 1988) and mediation (Adler, Hensler, and Nelson 1983; Lind et al. 1990; MacCoun et al. 1988), and studies of police officer dealings with citizens (Tyler 1988, 1990; Tyler and Folger 1980) have all found that people evaluate the fairness of legal decisionmaking procedures. In addition, researchers have found that concerns about procedural justice extend to organizational settings (Greenberg and Folger 1983; Folger and Greenberg 1985), political (Tyler and Caine 1981), educational (ibid.), and interpersonal (Barrett-Howard and Tyler 1986) settings. In fact, wherever procedural justice issues have been studied they have emerged as an important concern (see Lind and Tyler 1988).

Procedural concerns have emerged as especially important in the evaluation of authorities and institutions. Studies of legal authorities (Tyler 1984, 1990), political authorities (Tyler and Caine 1981; Tyler et al. 1985), and managerial authorities (Alexander and Ruderman 1987; Folger and Konovsky 1989) all suggest that procedural issues shape evaluations of authorities.

These findings suggest that procedural justice is also important on the national level, in particular with the Supreme Court. It is ironic that it is the viability of these national institutions which was the original concern leading to theories linking legitimacy to support for the "rules of the game," yet almost all of the recent research on procedural justice has focused on the local authorities with whom people have personal experiences. These findings suggest that procedural issues also matter in reactions to national institutions like the U.S. Supreme Court.

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