The Legitimacy Conferring Capacity of the U.S. Supreme Court: The Influence of Institutional Symbols

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The Legitimacy Conferring Capacity of the U.S. Supreme Court:
The Influence of Institutional Symbols

A considerable body of research has investigated the hypothesis that courts, through their institutional legitimacy, can persuade citizens to acquiesce to decisions with which they disagree. Most of this research relies upon a cognitive model of attitude change and acceptance. Citizens are thought to mull over the legal arguments of courts, which presumably include arguments not theretofore familiar to the citizen, and adjust their views accordingly. Or, relatedly, citizens may be stimulated to think about judicial power and legitimacy and therefore accept that the institution has the right to make authoritative decisions that require acceptance. The key element in this process is conscious thinking and deliberation.

Gibson and Caldeira (2009a) have put forth “Positivity Theory” in which they suggest that, when citizens pay attention to courts, they are influenced by the pageantry of judicial symbols, and this too contributes to acquiescence. Quite in contrast to the cognitive process typically assumed, citizens may be influenced by symbols such as judges’ robes, honorific forms of address, and the temple-like building in which courts are typically housed. Unfortunately, however, Positivity Theory is poorly developed when it comes to understanding the micro-level processes through which symbols influence citizens’ attitudes about court decisions.

Lodge and Taber (2011) have developed and tested a theory of motivated political reasoning that is readily applicable to this process of judicial persuasion and acquiescence. The theory posits that citizens engage in dual processing of socio-political stimuli that involves both conscious (System 1) and sub-conscious (System 2) processing. This theory is directly relevant to our understanding of the role of symbols in acquiescence because it explains how non-
consciously processed judicial symbols can have both conscious and sub-conscious effects on evaluations of courts and their decisions.

The purpose of this proposal is therefore to examine the influence of political symbols on the willingness of subjects to acquiesce to an unwelcomed judicial decision. Relying on the Theories of Motivated Reasoning and Positivity Theory, we seek to determine (1) whether the U.S. Supreme Court has any legitimacy-conferring capacity, and (2) whether the use of symbols enhances the legitimacy-conferring capacity of the Court. Although the theory and method proposed here are generally applicable to understanding how all sorts of symbols influence people, the substantive context of our research focuses on the legitimacy of courts and their ability to persuade citizens to comply with decisions with which they do not agree. Thus, this project bridges an important chasm between political psychology and judicial politics.

The “Legitimacy-Conferring Capacity”: In brief, the power of judicial legitimacy is the power to gain acquiescence to court decisions with which citizens disagree, and in this sense legitimacy presumes an objection precondition. Legitimacy is for losers, since winners typically accept decisions with which they agree. Without legitimacy, courts are dependent upon the support of winners, and therefore they can lose their independence and ability to check the majority’s passions and serve as guardians of the rule of law. Many scholars see the fabled Court decision in Bush v. Gore as a casebook example of how an institution can use its legitimacy to get its constituents to acquiesce to a decision with which they do not agree (e.g., Gibson, Caldeira, and Spence 2003a, Kritzer 2001, Nicholson and Howard 2003, and Yates and Whitford 2002).

Adding Institutional Symbols to the Process: Communication through legal symbols is an important, heretofore untested part of Positivity Theory. The theory asserts that encounters with
the judiciary, even when stimulated by dissatisfaction with the short-term actions of a court, are biased in favor of positivity and acquiescence because any attention to courts necessarily means exposure to the legitimizing symbols of judicial power.

The Theory of Motivated Political Reasoning explains how people are motivated to react positively to court decisions. Motivated reasoning is a result of the interaction between System 1 and System 2, and it is through this interaction that judicial symbols affect expressed attitudes. Whenever a person sees a judicial symbol, System 1 automatically triggers learned associated thoughts, which for most people will be ones of legitimacy and positivity. This activation leads to more conscious legitimating and positive thoughts in System 2, causing people to be motivated to accept the court’s decision. Thus, the unconscious processes of System 1 feed legitimating thoughts to System 2. The symbol acts as more than just a simple and “objective” cue. It fundamentally changes the motivations and thoughts people bring to the decision.

We hypothesize that citizens who have learned to associate judicial symbols with positive affect and legitimacy will be more likely to accept court decisions with which they disagree when these decisions are accompanied by judicial symbols than when they are accompanied by non-judicial control images. The purpose of this proposed project is to test that hypothesis. Fortunately, some pilot work we have conducted suggests that judicial symbols do in fact influence the propensity to accept an unwelcomed court decision.

Pilot Work: We have conducted three pilot studies to test the effect of judicial symbols on the acceptance of a disliked court decision, and in each the results supported our hypothesis that judicial symbols increase the acceptance of court decisions (see Authors, blinded). Our pilot experiments followed closely the design of this proposed project. In each of the pilot studies, we
discovered modest but statistically significant effects of judicial symbols. In those experiments, however, the symbols were visually tepid (at best). In this proposed project, we will use a wide array and more intense symbols of judicial authority.

**Hypotheses and the Overall Design of the Experiment:** Thus, our purpose in this research is to assess the ways in which institutional legitimacy and exposure to political symbols interact in inducing citizens to acquiesce to policy decisions with which they disagree. This experiment is a 2x2 between-subjects design. An overview of the design of our experiment is perhaps useful:

*Stage I:* (1) Measure institutional support – 5 questions. (2) Measure policy positions – 2 questions. Random assignment of subjects to a high issue salience or low issue salience conditions. By examining the effects of symbols under conditions of high and low salience, we will be able to derive the upper and lower boundaries of the effects of symbols on citizens.

*Stage II:* (1) Intervention–present an institutional ruling contrary to the respondent’s preference–1 unit. Randomly assign subjects to either symbol laden or symbol barren condition. (2) Measure acquiescence to the ruling – 4 questions. (3) Manipulation checks – 2 questions.

*Stage III:* (1) Re-measure institutional support – 5 questions

**Summary:** 19 questions, N = 1,000. Based on our pilot studies, 1,000 subjects provide sufficient power to detect statistically significant effects of symbols in the weak to moderate range.

**The Intervention:** The most important manipulation in this experiment has to do with the presentation of symbols when the Ss are told of the institutional decision. In this experiment, we will accompany the announcement of the institutional decision with strong symbols, using photographs of the Supreme Court building, the justices in their robes, the high bench itself, and honorific and deferential forms of address, and a control condition in which no recognizable
symbols are present. Our research design closely follows that of our pilot experiments.

**The Dependent Variables:** As Gibson, Caldeira, and Spence (2005) have observed, three different dependent variables are considered in research on the Supreme Court’s legitimacy conferring capacity: substantive attitude change, acquiescence to the decision, and attitudes toward the institution itself. As those authors argue, in a democratic society like the United States, many will argue for their right to maintain their own substantive attitudes, even while acknowledging the need to acquiesce to the decisions and maintain allegiance to the institution. Therefore, this project considers two dependent variables: (1) acquiescence to the Court’s decision, and (2) change in institutional support.

By “acquiescence” we mean the unwillingness of citizens to support efforts to impose institutional punishments as a result of a decision. A second dependent variable for this analysis is change in institutional support. Here, the theory concerns the expenditure of the Court’s political capital, its legitimacy. Fortunately, a great deal of research has investigated how to measure institutional support validly and reliably (e.g., Gibson, Caldeira, and Spence 2003b; Gibson 2011a; 2011b), and we therefore are ensured of having a dependent variable index comprised of valid indicators and that is highly reliable.

**Summary:** This project is the second step in a comprehensive research agenda on the influence of judicial symbols; although we hypothesize many other factors involved in persuading citizens to acquiesce, at this point in our agenda it is important to test for the effect of symbols in a representative sample of Americans. This study will generate findings relevant to the influence of symbols in many different contexts, not just in law (e.g., burkas), and therefore this project is relevant to a variety of social science “dependent variables” (e.g., xenophobia).

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Smith, Colin Tucker and Brian A. Nosek. 2007. *Affective Focus Increases the Concordance Between Implicit and Explicit Attitudes*. Unpublished manuscript.


**Issue Salience and Position**

We have decided that the best strategy is to wait until the survey is about to be fielded before we assemble the list of judicial issues. This will avoid any contamination that could arise from media reports on cases decided by the U.S. Supreme Court. We will provide a list of about six issues that could plausibly be decided by cases before the Supreme Court. Constructing these questions will be quite easy, inasmuch as we have used the same approach in the three pilot studies we have earlier conducted. Note that the issues themselves are not important to this research. Instead, this approach seeks only to set up the presentation of a Supreme Court decision that is directly contrary to the respondent’s preference on either a most or least important issue (thereby mirroring the Supreme Court’s caseload, which, for most Americans, involves cases that are highly important and cases that are not).

Here is a list of issues that are currently before the courts in the U.S. Please tell me which you personally consider to be the MOST important and which you personally consider to be the LEAST important.

**RANDOMLY ASSIGN TO MOST OR LEAST.**

Measure R’s position on the issue to which he or she is assigned. Do not allow “don’t know” responses.

**Measures of Institutional Support**

The following items are the best way to measure the legitimacy of the U.S. Supreme Court. These items have been widely pretested, subject to extensive analysis of psychometric properties, accepted in major peer-review articles, and replicated by numerous scholars.

**SCSUP1**

a. If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.

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<th>Agree Strongly</th>
<th>Agree</th>
<th>Are uncertain</th>
<th>Disagree or</th>
<th>Disagree Strongly</th>
<th>(VOL) DON’T KNOW</th>
<th>(VOL) REFUSED</th>
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<td>1</td>
<td>Agree Strongly</td>
<td>Agree</td>
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<td>Disagree or</td>
<td>Disagree Strongly</td>
<td>(VOL) DON’T KNOW</td>
<td>(VOL) REFUSED</td>
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b. The right of the Supreme Court to decide certain types of controversial issues should be reduced.

1 Agree Strongly
2 Agree
3 Are uncertain
4 Disagree or
5 Disagree Strongly
8 (VOL) DON'T KNOW
9 (VOL) REFUSED

SCSUP5
d. Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge. Do you [READ LIST]?

1 Agree Strongly
2 Agree
3 Are uncertain
4 Disagree or
5 Disagree Strongly
8 (VOL) DON'T KNOW
9 (VOL) REFUSED

SCSUP7
e. The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. Do you [READ LIST]?

1 Agree Strongly
2 Agree
3 Are uncertain
4 Disagree or
5 Disagree Strongly
8 (VOL) DON'T KNOW
9 (VOL) REFUSED

SCSUP8
f. It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court. Do you [READ LIST]?  

1  Agree Strongly  
2  Agree  
3  Are uncertain  
4  Disagree or  
5  Disagree Strongly  
8  (VOL) DON’T KNOW  
9  (VOL) REFUSED  

The Symbols Manipulation  

We attach to this measurement appendix a screen shoot from one of our pilot studies in which the justices of the Supreme Court are depicted. Different judicial symbols will be placed within each screen discussing the Supreme Court’s decision. The control condition will present the same textual information to the respondents, but without any symbols.  

Acquiescence to the Decision  

Acceptremove – support for removing justices  

Would you support or oppose efforts to remove justices who voted the wrong way on this case?  

1. Strongly Support  
2. Support  
3. Neither support nor oppose  
4. Oppose  
5. Strongly oppose  

Acceptamend – support for amending constitution  

Would you support or oppose efforts to overturn this decision with a constitutional amendment??  

1. Strongly Support  
2. Support  
3. Neither support nor oppose  
4. Oppose
5. Strongly oppose

**Acceptjudge** – support for adding agreeable judges to court

Would you support or oppose efforts to get more judges on the Supreme Court who agree with you that [STATE R’S ISSUE POSITION]?

1. Strongly Support
2. Support
3. Neither support nor oppose
4. Oppose
5. Strongly oppose

**Decaccept** – traditional acceptance question

Do you accept the decision made by the court? That is, do you think that the decision ought to be accepted and considered to be the final word on the matter or that there ought to be an effort to challenge the decision and get it changed?

1. Strongly believe the decision ought to be accepted and considered the final word on the matter.
2. Somewhat believe the decision ought to be accepted and considered the final word on the matter.
3. Somewhat believe there ought to be an effort to challenge the decision and get it changed.
4. Strongly believe there ought to be an effort to challenge the decision and get it changed.
8. DON’T KNOW

**Manipulation Checks**

How certain are you about whether you have seen a picture of the U.S. Supreme Court building in the material we have presented to you. Would you say you are

1. very certain you have seen a picture of the Supreme Court building
2. somewhat certain you have seen a picture of the Supreme Court building
3. somewhat certain you have NOT seen a picture of the Supreme Court building
4. very certain you have NOT seen a picture of the Supreme Court building
8. DON’T KNOW
How certain are you about whether you heard someone call a Supreme Court justice “your honor” in the material we have presented to you. Would you say you are

1. very certain you heard someone call a Supreme Court justice “your honor”
2. somewhat certain you heard someone call a Supreme Court justice “your honor”
3. somewhat certain you did NOT hear someone call a Supreme Court justice “your honor”
4. very certain you did NOT see hear someone call a Supreme Court justice “your honor”
5. DON’T KNOW

Post-Experiment Institutional Support
Repeat the measures of institutional support (see above).
The Supreme Court ruled that the cross is not a violation of the separation of church and state and can continue to stand where it is now.