

INSTITUTIONAL LEGITIMACY, PROCEDURAL JUSTICE, AND COMPLIANCE WITH SUPREME COURT DECISIONS: A QUESTION OF CAUSALITY

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In their essay, Tom Tyler and Ken Rasinski take issue with my analysis of legitimacy and procedural justice.¹ Although my article covered a fair number of different issues, their critique focuses on one particular conclusion. I argued that citizen perceptions of procedural fairness by the U.S. Supreme Court contributed little to the willingness of citizens to comply with unpopular court decisions. Instead, compliance (or acquiescence) was most likely when citizens accorded high levels of diffuse support to the Supreme Court. That is, those who viewed the Supreme Court as a more legitimate institution were more likely to accede to an unpopular decision. I concluded (1989:489): "Thus there is some evidence that the legitimacy of the Court, at least as reflected in levels of diffuse support, affects compliance with unpopular decisions. No such evidence exists for perceptions of procedural justice."

Tyler and Rasinski do not actually take issue with that conclusion so long as I attach a single additional adverb: "directly" must modify "affects" in the sentence I quote above. As is clear from the

¹ All of the analysis discussed here is based on a survey of a national probability sample in 1987. The survey was a two-wave panel. The first wave was conducted under the auspices of the General Social Survey, while the second wave of the panel—the Freedom and Tolerance in the United States, 1987 survey—was conducted under my direction with the assistance of a grant from the National Science Foundation (SES-86-006642). Nearly all of the items under consideration here are drawn from the Freedom and Tolerance survey. These data are available for additional analysis through the Inter-University Consortium for Political and Social Research ICPSR #9454).

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analysis presented in Table 7 in the original article, I examined only the direct effects of procedural perceptions on compliance. There is no dispute on this matter: both my original analysis and the new analysis by Tyler and Rasinski agree that those who perceive the Court as more procedurally fair are no more or no less likely to acquiesce to unpopular Court decisions. In this sense procedural perceptions do not affect compliance.

This commentary by Tyler and Rasinski thus focuses on a single issue: whether there are *indirect* effects of procedural perceptions on willingness to comply with unpopular decisions.² After all, one of the most important rationales for studying these perceptions is the hypothesis that they have some consequences of importance for law and politics. If procedural perceptions do not lead to something like compliance, then it is not clear that we ought to be devoting the amount of attention currently spent on analyzing perceptions of process and procedure. Thus, this issue is one of some considerable importance.

There are several reasons why I did not consider indirect effects in the original analysis. Two of these reasons are of direct relevance to this exchange. First, my analysis was structured around a single dependent variable: compliance. My objective was not to provide an analysis of (a) the possible consequences of procedural perceptions, or (b) the origins of diffuse support.³ Consequently, I offered no model of the causes of this or any other independent variable considered in the original analysis. Second, in order to explore indirect effects, it is essential to make an assumption about the particular causal ordering of the variables under consideration. A key difference between my colleagues and me is that I am unwilling to make such an assumption, while they are not unwilling to do so.

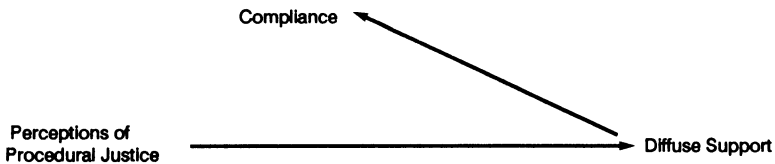
Why is this issue of causal ordering so important? Figure 1 presents two alternative models of connections between procedural perceptions, diffuse support, and compliance. The top portion of the figure shows the causal ordering preferred by Tyler and Rasinski; the bottom portion depicts a plausible alternative ordering. Unfortunately, there are few statistical techniques that can assist in differentiating these models. In analyses such as this one, the models must be judged logically rather than empirically.

Is it reasonable to assume, as Tyler and Rasinski do, that diffuse support is a function of procedural perceptions? I would cer-

² For reasons that will become clear below, I am unwilling to place much credence in the model depicted in figure 1 in Tyler and Rasinski's commentary. However, it should be noted that in their own analysis the *indirect* effect of procedural justice perceptions on compliance is quite weak statistically. I leave it to others to calculate the size of this effect and draw their own conclusions about whether its magnitude is of any substantive significance.

³ For analyses of variation in support for the Supreme Court based on these data, see Gibson and Caldeira (forthcoming) and Caldeira and Gibson (forthcoming).

Model A (Tyler and Raskinski)



Model B

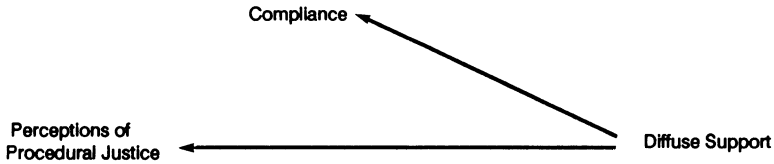


Figure 1. Alternative models of the relationships among compliance, diffuse support, and procedural perceptions.

tainly *not contend* that it is *unreasonable* to make such an assumption, and I am willing to concede that Tyler and Rasinski may be correct on this score. But to me it is not very likely that citizens develop their positions on the legitimacy of remote political and legal institutions on the basis of their perceptions of whether the decisionmakers in those institutions consider all sides to an issue, give everyone an opportunity to express her or his views, etc. Indeed, I consider it far more likely that views on the legitimacy of an institution reflect childhood socialization experiences and fundamental political values as well as accumulated satisfaction or dissatisfaction with the institution's policy outputs.

I am willing to go even one step further with this argument: I suspect that attitudes toward the fairness of procedures are “deduced” from general attitudes toward the legitimacy of the institution itself. At least in the absence of any real information about how the institution functions, I consider it more plausible that people fill in the details about how the institution operates largely on the basis of their general attitudes rather than “induce” their general view on the legitimacy of the institution from their specific procedural perceptions. This process is not unlike that depicted by those working with schema theories: Missing data are extrapolated from more general conceptual frameworks. Lau and Sears (1986) have described this process in a slightly different context: “If a politician is described as having just advanced to high office, he may be falsely remembered as being ambitious; if a person is categorized as a back-room politician, he may be falsely remembered as being corrupt, even if in each instance no information about the ambitiousness or honesty of the individual in question is available” (ibid., p. 352). This is what is happening when citizens are asked

about how the Supreme Court makes its decisions. The causal ordering of the variables depicted in the lower portion of Figure 1 strikes me as more plausible than that proposed by Tyler and Rasinski.

I am willing to consider that experience with legal and political institutions can overcome and alter basic perceptions of legitimacy. I am persuaded by the research literature showing that perceptions of procedural fairness among litigants in a dispute have something to do with their level of satisfaction with the outcome and perhaps even with their degree of compliance with the decision of the court. But the key difference here is actual experience. Litigants know something about procedures used by the institution deciding their case, whereas ordinary citizens know very little about the procedures of the Supreme Court.⁴ I do not believe that Tyler and Rasinski are correct about the causal ordering of these variables. At the same time, however, I do not believe that my analysis necessarily impugns the research showing a connection between procedural perceptions and legitimacy, since much of that literature is based on perceptions of institutions with which the respondent has had some real interaction. Procedural perceptions may matter in specific concrete contexts, even when they do not in more abstract and diffuse contexts.

A legitimate response to this argument is that if people have difficulty perceiving and understanding the procedures of remote institutions, then why did I ask the questions in the first place? The intent of asking the procedural justice questions was to use them as alternative measures of institutional legitimacy. As alternative indicators of essentially the same concept, it would make little sense to posit any causal ordering. Unfortunately for the procedural justice camp, when these two measures of institutional legitimacy are put to the acid test of whether they predict compliance, procedural perceptions have little impact, while diffuse support has a significant impact. Why? I believe that citizens' general views of institutions—including highly symbolic and diffuse views—have more to do with directing their behavior than do specific (but not well grounded empirically) perceptions of procedures employed by institutional decisionmakers.

Another strength of the diffuse support argument can be found in the minimal requirements it places on ordinary citizens. For most, support is inculcated at a fairly early age and persists throughout life. This is not to say that support is invariant; it waxes and wanes over time due to reinforcement or lack of reinforcement from the activities of the institution itself. Nonetheless, diffuse support has a sort of inertia that originates from socialization experiences. The disadvantage of the procedural justice argu-

⁴ See, e.g., the discussion by Tyler and Rasinski of the Murphy and Tanehaus findings.

ment is that it requires that citizens know something about the institution and how it operates. Since this is a formidable requirement for most citizens, it makes more sense to me to focus on general attitudes and values, rather than on specific perceptions. To hypothesize that attitudes toward institutions are shaped for the great majority of people, not by experiences or encounters with the institution, but rather by general political values, is a much more realistic view of the American people.

Some readers may legitimately wonder whether this dispute has any real implications for the allocation of liberty and justice in society. This is a reasonable query. For me, the answer is that it undoubtedly matters. Diffuse support for political institutions can sustain those institutions during times of political crisis. For example, the integrity of the U.S. Supreme Court was maintained in the 1930s in part due to the reservoir of good will and esteem that institution enjoyed at the time, even though many disagreed with the Court's policy outputs. The hypothesis that institutional legitimacy contributes to compliance is an important one, and Tyler, Rasinski, and I all agree that this research lends some support to that hypothesis.

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