

# UNDERSTANDINGS OF JUSTICE: INSTITUTIONAL LEGITIMACY, PROCEDURAL JUSTICE, AND POLITICAL TOLERANCE

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This research examines the linkages among institutional legitimacy, perceptions of procedural justice, and voluntary compliance with unpopular institutional decisions within the context of political intolerance and repression. Several questions are addressed, including: To what degree do judicial decisions contribute to the acceptance of unpopular political decisions? Do court decisions have a greater power to legitimize than the decisions of other political institutions? Are courts perceived as more procedurally fair than other political institutions? Do perceptions of procedural fairness—be it in a court or legislative institution—contribute to the efficacy of institutional decisions? The basic hypothesis of this research is that to the extent that an institution employs fair decisionmaking procedures, it is viewed as legitimate and citizens are more likely to comply with its decisions, even when they are unpopular. Based on an analysis of national survey data, I conclude that, although perceptions of institutional procedure have little impact on compliance, institutional legitimacy does seem to have some effect. The United States Supreme Court in particular seems to have some ability to elicit acceptance of public policies that are unpopular with the mass public. This effect is greatest among opinion leaders. I conclude with some observations about how these findings fit with the growing literature on procedural justice and with some thoughts about the implications of the findings for the protection of democratic liberty.

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## I. INTRODUCTION

One enduring component of the scholarly folklore on the United States Supreme Court is that the Court has some sort of special ability to legitimize government policies and actions. Because the Court is revered by the citizenry as the foremost guardian of the Constitution, its decisions are given uncommon sway. This special ability to legitimize is crucial to the political system because legitimacy engenders voluntary compliance with law by citizens (cf. Easton, 1965).

Dahl (1957) was one of the first social scientists to claim this power for the Court. After being forced by empirical evidence to conclude that the Supreme Court has *rarely* protected less powerful political minorities from the abuses of the majority, Dahl asserted that the institution's function throughout American history has been to legitimize public policy, not to upset it.<sup>1</sup> Not only do the decisions of the Supreme Court legitimize policy, but they also do so more effectively than the decisions of any other institution.<sup>2</sup> Dahl's view quickly became the conventional wisdom among judicial scholars (see, e.g., Black, 1960; Bickel, 1962).

This question of legitimizing capacity is crucial because of its implications for voluntary compliance with law. Since legitimate policies, even unpopular ones, are more likely to evoke compliance, the legitimizing abilities of the Supreme Court perform an extremely important function for the American polity. Unpopular decisions by institutions considered to be legitimate are more likely to be accepted as authoritative than are those made by political institutions of lesser legitimacy (cf. Rasinski *et al.*, 1985). Since coercion is rarely effective in modern, mass societies—and indeed it would be extremely costly if political systems were required to enforce each of their policies coercively—this ability to legitimize is often considered essential to system stability and persistence.

As important as this problem may be, empirical research has not generated a great deal of support for the legitimation hypothesis.<sup>3</sup> For instance, Murphy and Tanenhaus (1968, 1969) conclude that only a fairly small proportion of the population meets even the minimal criteria necessary for the Court to legitimize public policies. Jaros and Roper (1980), analyzing the responses of college students, were able to observe compliant behavior but were

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<sup>1</sup> Dahl's thesis is controversial. For contrary points of view, see Funston (1975) and Casper (1976).

<sup>2</sup> Adamany (1973: 807) summarizes this position succinctly in defining legitimacy as "an evaluative perception by the people that Supreme Court mandates should be accepted because the justices, as guardians of the Constitution, act by legal right, because they exercise a traditional authority, and because they constitute an appropriate societal institution."

<sup>3</sup> More generally, there is actually little systematic empirical research on the concept legitimacy. See, for example, McEwen and Maiman, 1986; and Rasinski *et al.*, 1985. The most important exception is Tyler (forthcoming).

remarkably unsuccessful in accounting for it. Baas and Thomas (1984), also analyzing college students, found little ability of the Supreme Court to legitimize policies. Others have become more directly skeptical about the power of the Court to legitimize the policies of other institutions. Writing in 1973, Adamany (p. 807) concluded that “none who bottom their arguments on the Court’s legitimacy-conferring capacity offer the slightest empirical basis for its reality. Perhaps the doubter should be content to move for a directed verdict, the proponents having failed utterly to adduce even a scintilla of evidence, much less a preponderance, in support of their plea.”<sup>4</sup> Thus research on the United States Supreme Court does not provide much confidence in the legitimization hypothesis.

On the other hand, new evidence suggests that courts in general may have special powers to legitimize. The growing literature on procedural justice emphasizes that decisions that are perceived as having been fairly made—even if they are unpopular—engender considerably more support than they otherwise would (see, e.g., Tyler, 1988, forthcoming; Lind and Tyler, 1988). As Tyler, Rasiniski, and Griffin (1986; 976) note, “Citizens’ compliance with the law and acceptance of new government policies is [*sic*] not based solely on reward and punishment considerations, but also on judgments about the fairness of rules and policies and of the process by which these policies were arrived at.”<sup>5</sup> Proper process contributes to acceptance of unpopular products. Perhaps the special abilities of the Supreme Court to legitimize public policy are associated with perceptions of its decisionmaking processes. Perhaps the edge that courts in general are thought to have in generating compliance is associated with their special concern with procedural fairness.

Indeed, it would not be surprising to find that courts are perceived as the most procedurally fair of all political institutions, since many people view them as insulated from “politics.” That is, courts are thought to be non-political in the sense that they make decisions on the basis of merit and logic, shunning the favoritism, logrolling, and pork barrel so central to decisionmaking in other political institutions (see, e.g., Jaros and Mendelsohn, 1967; Engstrom and Giles, 1972; Jaros and Roper, 1980). In courts, it is not who one knows that controls the decision, but rather it is the merits of one’s case. As the literature on procedural justice would hy-

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<sup>4</sup> Commenting a decade later, Adamany and Grossman (1983: 430) asserted: “It is no longer tenable to continue to assert that the failure of attempts to curb the Court or overturn its policies lies in some widespread public or elite support either for the justices’ decisions or for the Court as an institution.”

<sup>5</sup> Max Weber (1947) termed this “formal legitimation.” For a recent empirical analysis of this concept, see McEwen and Maiman, 1986.

pothesize, to the extent that courts are perceived as fair, their decisions are more likely to be accepted as authoritative and final.

Consequently, there is reason to re-open the question of whether the courts have special powers of legitimation. The general hypothesis is that to the extent that an institution employs fair decisionmaking procedures, it is perceived as legitimate and citizens are more likely to comply with its decisions, *even when they are unpopular*.<sup>6</sup> I test this hypothesis by considering several questions. To what degree do judicial decisions contribute to the acceptance of unpopular political decisions? Do court decisions have greater powers to legitimize than the decisions of other political institutions? Are courts perceived as more procedurally fair than other political institutions? Do perceptions of procedural fairness in either a judicial or legislative institution contribute to the efficacy of institutional decisions? To what degree does institutional legitimacy contribute to compliance?

## II. JUSTICE, LEGITIMACY, AND POLITICAL INTOLERANCE

I shall consider the problems of justice, legitimacy, and compliance within the context of political tolerance and civil liberties. In particular, my concern is with the role that political institutions can play in encouraging citizens who are predisposed not to tolerate unpopular political minorities *not to act* on their intolerance. The basic hypotheses under consideration are: (1) Institutional decisions can block the behavioral consequences of attitudinal intolerance by getting citizens to accept non-repressive policy decisions<sup>7</sup> as authoritative and final; (2) judicial institutions are more effective at this than are legislative institutions; (3) institutions perceived as making decisions fairly are more effective at generating compliance than are institutions not perceived as fair; and (4) more legitimate institutions are more effective at bringing about compliance than are less legitimate institutions. Because the procedural justice literature rarely considers political problems of this nature (but see Tyler, *et al.*, 1985; Rasinski, *et al.*, 1985; and Tyler, forthcoming), it is perhaps useful to begin the inquiry with

<sup>6</sup> Of course no one would argue that procedural perceptions are the sole determinant of compliance. The procedural hypothesis is instead that perceptions of fair methods of decisionmaking have an *independent* impact on willingness to accept an institutional decision as final and binding. For a more complete consideration of the compliance problem, see Tyler (forthcoming).

<sup>7</sup> This analysis is mainly concerned with the ability of institutional legitimacy to neutralize citizen *intolerance*. Of course, courts that ratify repressive public policy may neutralize *tolerant* public opinion. My focus is on institutional decisions that are democratic but that face an intolerant mass public. This is justified because intolerance is so widespread among the mass public in the United States (see, e.g., Gibson, in press) and because there is some evidence that elites, including those who make decisions within political institutions, are more tolerant than the ordinary public (see, e.g., Stouffer, 1955; McClosky and Brill, 1983). I do not gainsay that the processes, however, can work in both democratic and anti-democratic directions.

a digression to an actual civil liberties dispute. I use this conflict to give some idea of how institutional legitimacy and procedural fairness may influence acceptance of unpopular policy decisions. The event on which I shall focus concerns the right of the American Nazi Party to hold an anti-semitic demonstration in Skokie, Illinois, a predominantly Jewish suburb of Chicago.

The dispute in Skokie revolved around the efforts of Frank Collin and his National Socialist Party of America to hold a demonstration in 1977.<sup>8</sup> When confronted with the request to demonstrate, the Village of Skokie promptly adopted three pieces of legislation designed to control assemblies. Among the requirements of the first ordinance were \$350,000 liability and property damage insurance, and a prohibition on demonstrations that would libel specific religious, racial, ethnic, national, or regional groups. The second ordinance forbade the dissemination of materials that would libel groups, and outlawed markings and clothing of symbolic significance. The last ordinance prohibited demonstrations in military-style uniforms. All three ordinances were deemed decidedly unconstitutional by the federal trial and appellate courts (*Collin v. Smith*, 447 F. Supp. 676 (N.D. Ill. 1978); and *Collin v. Smith*, 578 F.2d 1197 (7th Cir. 1978)).

For the purposes of this article, the importance of the Skokie dispute is not its implications for constitutional law but instead its lessons on compliance, tolerance, and repression. The citizens of the village strongly and actively opposed the demonstration, even to the point that some threatened violence if the Nazis were actually to demonstrate. Even the community leaders were united in opposing the demonstration. Thus, there was a widespread intolerant and anti-democratic consensus among the elites and masses in Skokie.

At the same time, however, the dispute was brought to a relatively democratic conclusion.<sup>9</sup> The ordinances were invalidated, and Collin was allowed to demonstrate (for various reasons, he chose to demonstrate in Chicago instead). Thus, despite overwhelming intolerance, the dispute was resolved without undue compromise to basic civil liberties.

Barnum (1982) has argued that four factors were particularly important in the Skokie-Nazi dispute. First, the political leaders of Skokie acted undemocratically largely because they were forced to do so by their constituents. Their own inclinations were much more tolerant. Second, in this controversy (as in all political controversies: see Gibson and Bingham, 1985), there was a substantial gap between attitudinal intolerance and behavioral intolerance.

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<sup>8</sup> For accounts of this conflict, see Gibson and Bingham, 1985; Barnum, 1982; and Hamlin, 1980.

<sup>9</sup> My understanding of democracy very closely parallels that of Dahl (1971).

Many of those who opposed the demonstration simply did not act on their beliefs. Third, the policymaking process itself tended to defuse the emotional and symbolic impact of the issue. By delaying a decision and by defining it as a technical, legal dispute, the process of adjudication in the courts helped to decrease the salience and emotional impact of the issue. Finally, there was residual support for democratic procedural values among the elites and masses in Skokie. Although many may have opposed the demonstration, there was overwhelming support for allowing the dispute to be resolved through democratic procedures like adjudication. Barnum (1982: 504) argues that “the existence of judicial mechanisms for resolving civil liberties disputes must be accompanied by something like consensual support among the political elites for the propriety of resorting to the courts and the *necessity of accepting, without question, the policy determinations of the courts*” (emphasis added). It is thus the legitimacy of the judiciary that contributed to acceptance of a policy decision that was abhorred by the overwhelming majority of the community.<sup>10</sup> Consequently, there is some evidence that public understandings of institutional legitimacy and procedural justice tend to block or ameliorate the political impact of political intolerance. Commitments to democratic procedures neutralize the politically damaging and anti-democratic impact of political intolerance. This hypothesis will be subjected to empirical testing.

### III. DATA

My analysis is based on a national survey that was an extension of the 1987 General Social Survey (GSS), a nearly annual survey conducted by the National Opinion Research Center (NORC) with funding from the National Science Foundation. (For details on the sample see the Appendix). Respondents were randomly assigned one of the two versions of the questionnaire. All respondents were asked a set of legislative questions (e.g., regarding a city council), while half the respondents answered a set of judicial questions on the “U.S. Supreme Court” and the remaining half answered the same set of questions concerning a “local judge.” This reduced the number of cases available for analysis of the judicial questions but otherwise had no effect on the analysis due to the random assignment of the questionnaire versions.<sup>11</sup>

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<sup>10</sup> A better test of the hypothesis would have been provided had the Nazis actually demonstrated in Skokie. Had they done so, some segment of the population would have tried to stop the demonstration through any means possible, including violence. Because the Nazis did not demonstrate, it is impossible to estimate the proportion of the population that would not have allowed the demonstration to take place.

<sup>11</sup> Copies of the relevant items are available from the author on request.

#### IV. POLITICAL INTOLERANCE AND INSTITUTIONAL INTERVENTION

##### A. *Attitudinal Intolerance*

The first question to be addressed is how much political intolerance in fact exists within the mass public. Although this seems likely a relatively simple research problem, measurement issues require a brief digression.

Political intolerance is "a willingness to restrict a disliked group's democratic rights based on the content of one's views" (Sullivan *et al.*, 1985: 225). Sullivan, Piereson, and Marcus (1982) have argued that the concept makes little sense unless the target of intolerance is disliked. One cannot tolerate that with which one agrees: antipathy is a necessary precondition for tolerance. Consequently, researchers must insure that the target groups used in tolerance surveys are disliked by each of the respondents. One way of insuring this is to use the "least-liked" measurement approach.

Before asking respondents whether groups should be tolerated, the "least-liked" approach asks them to identify the politically active groups that they dislike the most. This insures that all respondents are questioned about a greatly disliked political minority, even if the specific group varies across individuals. Following the identification of this target, the respondent is asked whether members of the group should be allowed to engage in certain types of political activity, such as giving speeches and running for public office. This approach is thought to generate a more valid measure of political tolerance.<sup>12</sup>

The subjects in the 1987 survey were first asked to identify and rank order the four groups in politics that they disliked the most. They were then asked the following question about the group they named as most disliked:<sup>13</sup>

Now I'm going to ask you about a situation involving the [MOST DISLIKED GROUP]. Suppose that the [NAME OF GROUP] wanted to hold a demonstration here in your neighborhood to advocate its political views. Would you strongly support, support, oppose, or strongly oppose a decision by the government to allow the demonstration to take place?

The responses reveal a considerable amount of intolerance in the United States: 45 percent strongly oppose allowing the demonstra-

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<sup>12</sup> A whole series of conceptual and operational issues surround this measurement approach (see, e.g., Gibson, 1986; see also Mueller, 1988; Sullivan and Marcus, 1988), but they are of little concern here. I have only used the technique to insure that all respondents are asked to tolerate a threatening activity by a greatly disliked group. The approach is not used to generate a general measure of political tolerance.

<sup>13</sup> The most disliked group was the Ku Klux Klan (named by 32%), followed by communists (24%), advocates of military government (11%), atheists (11%), and Nazis (10%).

tion; an additional 33 percent oppose it; while only 18 percent support allowing it (the remainder are uncertain).<sup>14</sup>

The analysis that follows is concerned with the degree to which the intolerant attitudes of citizens are neutralized by the tolerant decisions of legitimate institutions. Consequently, I have little concern for the 18 percent of the sample that is initially tolerant (or with the 4 percent that is uncertain), but rather focus exclusively on those who would not support a decision allowing the demonstration.

### B. Behavioral Intolerance

The above item measures attitudinal intolerance. In the short term at least, few would argue that legitimate and fair political institutions would affect the attitudes of citizens. The central hypothesis of this research is that the legitimacy of non-repressive political institutions neutralizes the *behavioral* implications of the intolerant attitudes of the mass public by getting citizens to accept the authoritative decisions of the institution, abide by them, and not to challenge them further. Thus, the first question that should be addressed concerns the likelihood of a behavioral response flowing from these attitudes. I consider this problem by asking the subjects what they are inclined to do in response to the proposed demonstration.<sup>15</sup>

It is useful to have a base-line measure of behavioral propensi-

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<sup>14</sup> I am not using these data to make any assertion about the absolute level of tolerance and intolerance in the United States. Political intolerance is a continuum, and no single item can tell us how much exists. Indeed, the measure I have used is a fairly difficult one in that it asks about the most disliked group engaging in a highly threatening activity with a great deal of perceived potential for violence, and it places the demonstration directly in the respondent's neighborhood. The severity of this stimulus as compared to the more typical "should a communist be allowed to speak in your community" is confirmed in part by the considerably greater proportion of intolerant responses it generates. For a more complete discussion of contemporary intolerance in the United States, see Gibson (in press).

<sup>15</sup> There is little doubt that a considerable chasm exists between simulated or hypothetical behavior and actual action within a real civil liberties dispute. Nonetheless, there are important reasons for studying hypothetical behavior. First, hypothetical behavior may be thought of as a behavioral propensity. Reactions to any given dispute may diverge from the behavioral propensity due to contextual factors, but the propensity nonetheless represents the central tendency (or most likely response, on average) of a larger distribution of actual behaviors. Second, it is exceedingly difficult to study actual repressive political behavior because opportunities to repress one's fellow citizens do not emerge with the periodicity of elections, court appearances, and other chances for political activism. Thus, researchers can rarely mobilize a field study of these sporadic events. (For examples of studies that focus on particular civil liberties disputes, see Gibson and Bingham, 1985; Gibson, 1987; and Gibson and Tedin, 1988.) Although hypothetical behavior is not the same as actual behavior, it is useful to try to take a step beyond the simple focus on attitudes to determine if respondents themselves foresee behavioral consequences of their beliefs. For an excellent study of hypothetical behavior in a related area, see Muller (1979). On the use of hypothetical, or "role-playing," measures more generally, see Cooper (1976), and Forward, *et al.* (1976).



ties before considering the impact of institutional decisions. Table 1 reports data on the responses to several behavioral possibilities occasioned by the supposition that the demonstration was scheduled to take place next week.

The first thing to note in the table is that roughly one-half of the subjects report that they would probably do something to try to get the government to stop the demonstration (47.5% is either somewhat or very unlikely to do nothing). Moreover, a relatively small but not inconsequential minority say they would go beyond conventional political activity to take direct actions against the group, including actions that might be illegal. It thus appears that levels of behavioral intolerance would be relatively high prior to any decision by an authoritative political institution.

### C. *The Effect of Institutional Intervention*

The question of greatest interest is whether institutional intervention has any impact on willingness to allow the unpopular political minority to exercise its civil liberties. The subjects were asked to suppose that a decision to allow the demonstration had been made by the local legislature (the city council or county government), and then by a court (for one-half the sample, the United States Supreme Court; for the other half, a local judge). The legitimacy hypothesis predicts that the rulings of these institutions should increase the likelihood of accepting the decision as final and doing nothing further to challenge it. Table 2 reports data relevant to this question.<sup>16</sup>

Perhaps the most striking aspect of Table 2 is the overall similarity of the effects of the different institutional decisions on compliance. Although there are some minor differences, a decision by a local legislature generally has roughly the same impact on compliance as does a decision by a local judge or the Supreme Court. For instance, 52.5 percent report that they would be very or somewhat likely to do nothing *after* a legislative decision. The comparable figure for a decision by a local judge is 53.5 percent. Slightly greater compliance is observed after a decision of the Supreme Court: 61.8 percent are unlikely to do anything further. Thus, while there is little difference between the impact of the local court and the local legislature, to the extent that the figures differ, the Supreme Court has a slight edge in generating acceptance of its decisions. Overall, the differences across institution are surprisingly slight.<sup>17</sup>

<sup>16</sup> Note that the actual text of the question directed toward the Supreme Court was, "How likely is it that you would do nothing at the moment but base your vote in the next election on getting new justices on the Court?"

<sup>17</sup> A different way of assessing institutional differences involves changing the unit of analysis from the respondent to the respondent-institution. In this format, the responses to the compliance questions are "stacked" on top of one another and thus do not distinguish between the type of institution, which is

Table 1: Intolerant Behavioral Propensities

Action	Likelihood of Action (%)				Total <sup>a</sup>
	Very Likely	Somewhat Likely	Somewhat Unlikely	Very Unlikely	
Try to get the government to stop the demonstration	25.2	28.2	22.9	23.6	99.9 (933) <sup>b</sup>
Try to get people to go to the demonstration and stop it in any way possible, even if it meant breaking the law	6.4	10.4	26.9	56.3	100.0 (936)
Try to get the group not to hold its demonstration, even if it meant doing some things against the group that are illegal	4.6	10.7	28.6	56.2	100.1 (937)
Do nothing to try to stop the demonstration from taking place	23.6	29.0	26.0	21.5	100.1 (928)

<sup>a</sup> Those who said "don't know" were omitted from the calculations.

<sup>b</sup> *N* is in parentheses.

**Table 2.** Intolerant Behavioral Propensities, After Institutional Intervention

Action	Likelihood of Action (%)		Total <sup>a</sup>
	Very or Somewhat Likely	Somewhat or Very Unlikely	
Try to get people to go to the demonstration and stop it in any way possible, even if it meant breaking the law			
Local legislature	15.4	84.6	100.0 (936) <sup>b</sup>
Local judge	13.8	86.2	100.0 (460)
U.S. Supreme Court	13.4	86.6	100.0 (476)
Try to get the institution's decision reversed by some other government body			
Local legislature	48.7	51.3	100.0 (931)
Local judge	47.5	52.5	100.0 (453)
U.S. Supreme Court	41.3	58.7	100.0 (471)
Do nothing at the moment but vote against the [decisionmaker] at the next election			
Local legislature	72.3	27.7	100.0 (924)
Local judge	71.8	28.2	100.0 (457)
U.S. Supreme Court	73.0	27.0	100.0 (466)
Do nothing to try to stop the demonstration from taking place			
Local legislature	47.5	52.5	100.0 (935)
Local judge	46.5	53.5	100.0 (456)
U.S. Supreme Court	38.2	61.8	100.0 (475)

<sup>a</sup> Those who said "don't know" were omitted from the calculations.

<sup>b</sup> *N* is in parentheses.

The data in Table 2 do not control for the response prior to the institutional decision and may therefore be misleading because, quite apart from any questions of institutional legitimacy, individuals vary in the likelihood of taking action in political disputes. Consequently, Table 3 reports the likelihood of behavioral intolerance after the legislative decision, controlling for the initial behavioral propensity. The first hypothesis is that legislative action increases the probability of doing nothing. To simplify matters, the

then used as a variable to assess response differences. This approach yields statistically significant differences across institutions only on the "do nothing" and "try to reverse the policy" items. However, for both of these *eta* equals .08, indicating an extremely weak level of association. Thus, it is appropriate to conclude that institutional differences in compliance responses are trivial.

**Table 3.** The Influence of Institutional Legitimacy on Behavioral Acceptance of Political Tolerance: Doing Nothing

Likelihood After Institutional Decision	Initial Likelihood of Acting (%)	
	Unlikely	Likely
Local legislature		
Unlikely to act	71.0	31.7
Likely to act	29.0	68.3
Total	100.0 (486) <sup>a</sup>	100.0 (439)
Local judge		
Unlikely to act	68.0	36.4
Likely to act	32.0	63.6
Total	100.0 (242)	100.0 (206)
U.S. Supreme Court		
Unlikely to act	73.1	49.6
Likely to act	26.9	50.4
Total	100.0 (242)	100.0 (228)

<sup>a</sup> *N* is in parentheses.

data from the summary item on taking any action in response to the decision are presented.

Nearly one-third of those who were initially inclined to take action (very or somewhat unlikely to do nothing) report being less likely to act after the legislative decision. It seems that the legislative decision significantly affected the chance of anti-democratic action. On the other hand, among those initially *disinclined* to act, the legislative decision seems to have made nearly 30 percent *more* predisposed to take action. Thus, while the legislative decision decreased the likelihood of action among those initially predisposed to act, it increased the likelihood among those initially predisposed *not* to act.

The results are similar after a local court decision on the request to demonstrate.<sup>18</sup> Among those initially inclined to act, 36.4 percent became less likely to act after the local court decision (see Table 3). Similarly, among those who probably would not have acted initially, 32.0 percent became more likely to act. Thus, the court decision increased the probability of compliance but at the same time tended to increase the likelihood of action among those who were initially disinclined to act.

Table 3 also reports the results of a similar question focused

<sup>18</sup> It must be noted that the court questions *followed* the questions on the local legislative decision. Thus, Table 3 shows the effect of *both* the legislative decision and the ruling of the court. It was simply not feasible to use a split ballot to randomize the order of the legislative and court stimuli. Moreover, the most common situation in real political conflict is for the legislative branch (e.g., the city council) to act first and for the legislative action to be reviewed by a court.

on a decision by the Supreme Court.<sup>19</sup> Although the findings are generally like those for the local court and local legislature, the effect of the Court decision is substantially stronger. Nearly one-half of those initially inclined to do something to block the demonstration report being less so inclined after a decision by the Supreme Court. The effect is not overwhelming—50.4 percent still intend not to comply with the Court's decision—and there is another group (26.9 percent) who would be mobilized to action by the decision, but there is nonetheless some evidence of the Court's capacity to engender compliance with unpopular political decisions.<sup>20</sup>

Why would an institutional decision incite action among respondents who apparently were not so inclined in the first place? This is a bit of a puzzle, and perhaps an important one. First, it is important to rule out the possibility that the changes in both directions are simply random. While random responses would produce approximately equal numbers of respondents showing greater and lesser willingness to take actions, they would not yield a pattern of consistent reactions to different institutions. In fact, there are moderately strong relationships between willingness to take action after the legislative and judicial decisions. For the legislative and lower court items, the correlation is .51; for the legislative and Supreme Court items, the correlation is .44 (based on collapsing those who did not change and those who were *less* likely to act). This suggests that some portion of the responses is due to the attributes of the individual, not of the institution.<sup>21</sup>

<sup>19</sup> For the sake of simplicity, the data in Table 3 have been dichotomized. Using the original 4-category responses ranging from "very likely" to "very unlikely," among those initially predisposed to act, 42% became less likely to act after a legislative ruling, 47% became less likely to act after a local court decision, and 59% became less likely to act after a Supreme Court decision. From these data, it appears that institutional decisions are important, that there is a slightly greater impact on compliance of judicial decisions, and that the Supreme Court is the most effective of the 3 institutions.

<sup>20</sup> A different way to isolate the effect of court action on acceptance of an unpopular political decision is to use as the base line the action probabilities *after* the legislative decision rather than the initial likelihood of acting. This reveals that nearly one-half of those who were initially quite inclined to act were less likely to do so after a local court ruling, while slightly more than one-half were less likely to act after a Supreme Court ruling. Among those who would probably take action, 29% were less likely to act after a local court decision (23% were more likely to act), while 23% were less likely to act after a Supreme Court decision (17% were more likely to act). Thus the Supreme Court is slightly but not greatly more effective at blocking action.

<sup>21</sup> Another possible explanation is that some sort of social desirability effect is causing the probabilities of action to increase among those initially predisposed to do nothing. Assuming that action is the socially desirable response, there could be an unwillingness to report repeatedly to the interviewer that no action would be taken. This tendency probably inflates the proportion claiming to be willing to take action and does so disproportionately among those initially disinclined to act.

On the other hand, there is no relationship between a widely used measure of susceptibility to social desirability (Crowne and Marlowe, 1960) and willingness to take action before or after any of the institutional decisions, nor does level of self-esteem correlate with the behavioral responses. This sug-

**Table 4.** The Influence of Institutional Legitimacy on Behavioral Acceptance of Political Tolerance: Get People to Stop the Demonstration

Likelihood After Institutional Decision	Initial Likelihood of Acting (%)	
	Unlikely	Likely
Local legislature		
Likely to act	95.1	32.0
Unlikely to act	4.9	68.0
Total	100.0 (777) <sup>a</sup>	100.0 (155)
Local judge		
Likely to act	94.7	45.5
Unlikely to act	5.3	54.5
Total	100.0 (376)	100.0 (79)
U.S. Supreme Court		
Likely to act	94.7	44.4
Unlikely to act	5.3	55.6
Total	100.0 (398)	100.0 (76)

<sup>a</sup> *N* is in parentheses.

It is possible that institutional action to allow the demonstration elicits a response because the respondent perceives that the demonstration is more imminent. Perhaps some imagined, when first asked about taking action, that it was unimportant to do anything because the government would prohibit the demonstration. Once they were told that the government had decided to allow the demonstration, they saw no further obstacles and decided they had to do something themselves. I cannot be certain about this interpretation, because no data are available to test the hypothesis that the institutional action increased the perceived threat of the demonstration.

It is also useful to consider illegal and extra-legal action more directly by focusing on the responses to the item asking whether the respondent would be likely to "try to get people to go to the demonstration and stop it in any way possible, even if it meant breaking the law." The hypothesis is that legislative and judicial rulings reduce the likelihood of this sort of behavior. These data are shown in Table 4.

Relatively few respondents report any likelihood of taking direct action to stop the demonstration. Those so inclined, however, show some tendency for an institutional ruling to decrease the

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gests that the conclusions are unaffected by problems of a socially desirable tendency toward political action.

Moreover, based on interviewer judgments, there is no evidence that these subjects were any less interested in the interviews, or had a lower understanding of the questions. Using more objective measures, the respondents did not have less political knowledge and their opinions on the demonstration were not more intense.

chance of anti-democratic behavior. For instance, a legislative decision reduces the chances of direct action for 32 percent of those initially predisposed to act. Comparable figures for the local courts and Supreme Court are 45.5 percent and 44.4 percent, respectively. Unlike the findings regarding any sort of action, there is little difference between the local courts and the Supreme Court in ability to dissuade illegal action. Nor is there a similar mobilization effect, for only a handful of respondents would be stimulated by an institutional decision to engage in this sort of behavior.<sup>22</sup>

Thus, these data provide some evidence that institutional rulings affect the likelihood of compliance with tolerant but unpopular policies, and that the combined effect of judicial institutions and legislative actions is slightly more efficacious on this score than legislative action alone. The effect, however, is modest. More importantly, there is no direct evidence that anything about the institutional decision is related to perceptions of its fairness. Perhaps the observed effect is due to nothing more than pragmatic judgments about the likelihood that resistance to institutional decisions will produce results. Once a decision has been made, through whatever sorts of processes, people may simply judge that the odds of overturning it are slight. It is therefore necessary to consider the procedural justice hypothesis more directly.

#### *D. Institutional Procedures*

The literature on procedural justice suggests that willingness to accept and comply with an unpopular decision is in part a function of perceptions of the fairness of the procedures used to make the decision (see, e.g., Adler, *et al.*, 1983; McEwen and Maiman, 1981, 1984; Tyler, 1984, 1988; Tyler, *et al.*, 1985; and Lind and Tyler, 1988). This suggests that perceptions of the institutional decision-making processes may contribute to compliance. More specifically, I hypothesize that to the extent the decisionmaking processes of these institutions are perceived as fair, the behavioral consequences of intolerant attitudes will be minimized.

Table 5 reports data on the perceptions of the decisionmaking process in the local government council (such as the city council and the board of alderman), in the local courts, and in the Supreme Court. First, it should be remembered that the numbers of cases for the judicial institutions is roughly one-half that of the local council due to the split-ballot format. Second, a significant portion of the respondents claims to be uncertain as to the nature of decisionmaking within these institutions. The table shows the respondents perceiving the decisions to be fair as a percentage of

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<sup>22</sup> Summarizing the uncollapsed data (not reported in the table), 38% of those very likely to engage in direct action to stop the demonstration were less so inclined after a legislative decision; while 53% and 50% were less so inclined after a local court and Supreme Court decision, respectively.

**Table 5.** Perceptions of Procedural Fairness in Institutional Decisionmaking

Decisional Attribute	Percent Perceiving Procedural Fairness		
	Local Legislature	Local Court	U.S. Supreme Court
Considers the views of all sides to an issue before making a decision	35.0	26.5	26.2
Gives interested citizens an opportunity to express their views before making a decision	68.2	54.7	49.5
Makes decisions only after they assemble all the relevant information on an issue	52.2	62.2	73.2
Can be counted on to make decisions in a fair way	57.5	63.4	69.7

all respondents answering the question (the uncertain respondents are included in the denominator). Third, most respondents perceive the decisionmaking processes within all three institutions to be relatively fair. Of those who are not uncertain, substantially more perceive the institutional decisionmaking to be fair rather than unfair. The most negative sentiment is on whether the local council considers the views of all sides to an issue before making a decision (35% believe that the council seldom does so).

Nonetheless, there are some important inter-institutional differences. The institution perceived to make decisions most fairly is the United States Supreme Court, in part because it makes decisions on the basis of full information. On the other hand, the Court is seen as less likely to give citizens the opportunity to express their views, even if it does consider all sides to an issue.

Generally, the local legislature is perceived as most fair in terms of accessibility to citizens. Fully two-thirds perceive the local council as providing citizens an opportunity to be heard, even if they are less sanguine about whether their views are actually considered in making decisions. While the local legislature and local courts are evaluated similarly in overall judgments in decisionmaking fairness, local courts are perceived as being more likely to make a decision based on full information.

For all three institutions, the strongest correlate of general evaluations of fairness ("counted on to make decisions in a fair way") is the item concerning whether all relevant information is assembled before making a decision (Pearson correlation coefficients,  $r$ , range from .50 to .59). Second most important in each in-



stance is the item on whether citizens are given an opportunity to express their views ( $r$  correlations range from .35 to .48). Those who perceive the local council as fair are generally likely to perceive local courts as fair ( $r = .43$ ) and are somewhat more likely to perceive the United States Supreme Court as fair ( $r = .27$ ). The crucial question for this analysis is whether these perceptions of decisionmaking fairness have any impact upon willingness to comply with the decisions of the institution. This hypothesis can be tested using the data shown in Table 6.

*Perceptions of the fairness of the decisionmaking processes within these institutions have virtually no impact on willingness to accept the institutional decision as final and binding.* I base this conclusion on the measures of the likelihood of challenging the action of the institution shown in Table 6. For instance, consider the likelihood of doing nothing after the institutional decision. The correlation between perceptions of institutional fairness and the likelihood of doing nothing is .01 for the legislative decision:  $-.01$  for the local court decision; and .01 for the Supreme Court decision. Even when we control for the initial likelihood of acting, there is little relationship.<sup>23</sup> It is clear that citizens report that they are no more willing to accept an unpopular decision if they perceive that it is fairly made than when they do not perceive that it is fair.

A different way of testing this hypothesis is simply to regress willingness to comply with the decision of the institution on perceived fairness in decisionmaking processes. With or without the control for initial behavioral propensities, the conclusions are the same: Perceptions of procedural fairness have little or no impact on willingness to comply. The maximum  $R^2$  observed is .04, which results from regressing acceptance of the decision of the local council on the four perceived attributes of its decisionmaking process. Perceptions of procedural justice in Supreme Court and local court decisionmaking have no impact whatsoever on willingness to accept the judicial decisions as final. Where institutional decisionmaking processes are perceived as being more fair, acceptance of the unpopular institutional decision is *not* enhanced.<sup>24</sup> This analysis suggests that to the extent that there is any impact on compliance that flows from institutional ratification of unpopular deci-

<sup>23</sup> Due to differences in question wording, this comparison can only be made for 2 sorts of activity: doing nothing to try to stop the demonstration and trying to get people to go to the demonstration and stop it in any way possible, even if it meant breaking the law. The analysis is of the difference in the likelihoods after and before the respondent is given information about the decision of the institution. The only significant relationship observed is between perceptions of local court fairness and the likelihood of doing something ( $p = .02$ ), but it is not monotonic and not interpretable.

<sup>24</sup> Shifting the unit of analysis to the respondent-institution merely confirms this conclusion. When willingness to comply is regressed on the 4 fair perceptions and 2 dummy variables representing the 3 institutions, the  $R^2$  is .02.

**Table 6.** Impact of Perceptions of Procedural Fairness on Compliance<sup>a</sup>

Action	Procedural Perceptions			
	Considers All Sides	Opportunity to Express Views	Full Information Decisions	Fair Decisions
<b>Local legislature</b>				
Try to stop the demonstration, even illegally	-.00	.13	.16	.09
Try to get the government's decision reversed	-.09	-.07	-.05	-.03
Vote against the decisionmakers in the next election	.02	.03	-.10	.03
Do nothing	.06	.02	-.01	.01
<b>Local court</b>				
Try to stop the demonstration, even illegally	.01	.03	-.04	-.01
Try to get the government's decision reversed	-.17	-.08	-.07	-.11
Vote against the decisionmakers in the next election	.02	-.18	-.06	-.04
Do nothing	-.03	.08	-.03	-.01
<b>U.S. Supreme Court</b>				
Try to stop the demonstration, even illegally	.05	-.01	.03	.03
Try to get the government's decision reversed	-.11	.07	-.03	.01
Vote against the decisionmakers in the next election	-.04	.08	-.01	.03
Do nothing	.07	.01	.00	.01

<sup>a</sup> Entries are Pearson correlation coefficients. All variables have been coded so that negative relationships are hypothesized.

sions, this impact is *not* associated with the perceived fairness of the institutional decisionmaking processes.<sup>25</sup>

<sup>25</sup> It is most curious that to the extent that the perceived fairness of the institutional decisionmaking processes has any impact on compliance, it is the legislative institution that is effective, not the judicial institutions. This is curious because the argument is commonly made that judicial institutions have

### E. *Legitimacy*

I have shown that a decision by the Supreme Court has some impact on compliance but that the impact is not associated with perceptions of institutional fairness. Why then are citizens more likely to accept an unpopular political decision after the Supreme Court has rendered its opinion? One reason may be that the Court is perceived as a *legitimate* institution, irrespective of whether its decisionmaking procedures are perceived as fair (or for that matter not perceived at all). As Rasinski, Tyler, and Fridkin (1985) and Tyler (forthcoming) have shown, perceptions of legitimacy have an independent impact on compliance. Indeed, the original Dahl (1957) hypothesis was grounded in assumptions about the legitimacy of the Supreme Court.

No direct measure of legitimacy is available here, and indeed it is not obvious that legitimacy can be directly measured in survey research. Instead, I employ an index of diffuse support<sup>26</sup>—a closely related concept (cf. Easton, 1975)—and I hypothesize that those who are more supportive of the Court as an institution are more likely to accept its decisions as authoritative.

The data provide no support for the hypothesis: The relationship between the diffuse support measure and willingness to accept the Supreme Court's decision is a trivial .07, and is not in the hypothesized direction. Like procedural perceptions, it seems that these attitudes have little impact on compliance.

This relationship may be confounded by two factors. First, it does not control for the initial behavioral propensity, and, second, it may be influenced by those who are more likely to act after a Court decision. To consider whether the hypothesis suffers due to these data maladies, I have constructed a more sensitive measure of change in behavior that ranges from negative scores that indicate a greater likelihood of compliance (that is, inaction) after the decision to positive scores indicating a greater likelihood of non-compliance after the decision. So the conditional effects can be observed, two separate analyses are performed. The first compares those who are more likely to comply with those who were unaffected by the Court decision, while the second compares those more likely not to comply with those who did not change. Both

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special powers of legitimation beyond those of legislative institutions. Here, however, is evidence (albeit slight) of exactly the opposite effect. Even more curiously, it is not the responsiveness of the local legislature to constituency opinion that is most influential but instead the belief that the local council considers all relevant information in making decisions. One might have expected that this aspect of procedural fairness would be the forte of judicial, not legislative, institutions. Because these relationships are so weak, it is perhaps prudent not to try to explain them.

<sup>26</sup> The conceptualization, operationalization, and validation of this measure are reported in Caldeira and Gibson (1989). The correlations between diffuse support and perceptions of procedural fairness range from .16 to .35.

Table 7. The Impact of Perceptions of Procedural Fairness and Diffuse Support on Compliance: United States Supreme Court

Attitude	Change in Behavior*					
	More Likely to Comply			More Likely Not to Comply		
	<i>r</i>	<i>b</i>	$\beta$	<i>r</i>	<i>b</i>	$\beta$
Procedural perceptions						
Considers all sides	.07	.13	.15**	-.11	-.09	-.11
Opportunity to express views	-.04	-.05	-.06	-.04	-.04	-.05
Full information decisions	.04	.06	.05	.04	.01	.01
Fair decisions	-.01	-.04	-.04	.06	.07	.07
Diffuse support	-.13	-.19	-.20**	-.01	.05	.05
$R^2$		.04			.02	

\* *r* = Pearson correlation coefficient, *b* = unstandardized regression coefficient,  $\beta$  = standardized regression coefficient.

\*\* Significant at .01 or less

the procedural justice variables and diffuse support are employed as predictors. The results are shown in Table 7.

Diffuse support emerges as the best predictor of compliance: Those who are supportive of the Court are significantly more likely to comply with its decisions even when they are disagreeable. The other significant relationship—between a procedural perception and compliance—is *not* in the predicted direction: Those who believe that the Supreme Court seldom considers all sides to an issue are *more* likely to comply. This may reflect the perception that it is futile to challenge the decisions of the Court because the justices are unlikely to take contrary views into account when making their decisions. None of the predictors accounts for those who are more likely to act after a decision by the Court. Indeed, the directions of most of the relationships are not as predicted.

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.

#### *F. Opinion Leaders*

It is sometimes suggested that while the impact of court decisions on the ordinary mass public is not great, their impact on opinion leaders (variously defined) is more substantial. It is these opinion leaders who in turn structure the perceptions of ordinary citizens through a “two-step” flow of information. Thus it is useful to consider whether the research findings reported here also characterize opinion leaders.

Opinion leadership is operationalized in terms of self-reports of the frequency with which others ask for the respondent’s opinions.<sup>27</sup> Responses were collected using a trichotomous response set; whether the respondents are very often, sometimes, or hardly ever asked for their opinions. I hypothesize that the effect of procedural perceptions is more significant on opinion leaders.

Opinion leaders are only slightly more likely to be tolerant of the demonstration in the first place. Among those who are intolerant (the group of concern throughout this article), opinion leaders do *not* differ from other citizens in their perceptions of the procedural elements of judicial or legislative decisionmaking. Table 8 reports the evidence on whether opinion leaders who perceive that the decisions of these institutions are fairly made are more likely to comply with unpopular policies.

There is some evidence that the procedural perceptions of the

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<sup>27</sup> Two other variables indicate opinion leadership: (1) how often the respondent attempts to persuade others how to vote and (2) attentiveness to the United States Supreme Court. None of the substantive findings reported here is dependent upon the choice of the specific indicator of opinion leadership. Additional details on the attributes of the opinion leaders are available from the author.

**Table 8.** The Impact of Perceptions of Procedural Fairness on Procedural Compliance, by Opinion Leadership<sup>a</sup>

Frequency of Opinion Giving	Multiple Correlation Between Perceptions of Fairness and Compliance
Local legislature	
Often gives opinions	.13 (79)
Sometimes gives opinions	.05 (374)
Hardly ever gives opinions	.04 (412)
Local court	
Often gives opinions	.08 (41)
Sometimes gives opinions	.03 (201)
Hardly ever gives opinions	.04 (181)
U.S. Supreme court	
Often gives opinions	.14 (38)
Sometimes gives opinions	.03 (170)
Hardly ever gives opinions	.01 (228)

<sup>a</sup> Entries are  $R^2$ . The figures in parentheses are the numbers of cases on which the coefficients are based. Four procedural perceptions are used as predictors of compliance.

opinion leaders do affect their willingness to accept an institutional decision as binding. The most powerful effect is in terms of a decision of the Supreme Court or local legislature, followed by a decision of a lower court. *When a decision is perceived as more fairly made, opinion leaders are more likely to report a willingness to comply with the unpopular institutional decision.* Thus, we find some support for the procedural hypothesis in this segment of the population.

There is also a considerably greater effect of legitimacy on compliance among opinion leaders. The addition of the diffuse support measure adds 7 percent to the explained variance within opinion leaders, while the increment within the other two groups is trivial. Willingness to comply among opinion leaders is thus contingent upon both perceptions of procedural justice and institutional support for the Supreme Court.

These conclusions are limited to some degree by the relatively small number of respondents who are identified as opinion leaders, which reflects the fairly small segment of the American population who see themselves in this role. Thus while the effect of procedural perceptions might not be trivial, the proportion of the population affected by such perceptions is quite small. Additional research is needed to test the stability of these findings for special populations.<sup>28</sup>

<sup>28</sup> It is tempting to analyze the views of these opinion leaders further, but the small numbers of cases available for analysis makes it prudent not to expand this line of analysis.

## V. CONCLUSION

This analysis shows that institutional intervention can play some role in insuring citizen compliance with unpopular policy decisions. To some extent, the antidemocratic implications of the political intolerance so commonly observed in the United States are neutralized when institutions make policy decisions to protect unpopular political minorities. The results suggest that the legitimizing capacity of judicial institutions exceeds that of legislative institutions, although not by much. The United States Supreme Court appears to be slightly more effective at stimulating compliance than lower courts.

At the same time, the procedural fairness hypothesis does not fare particularly well. Decisions that are perceived as more fairly made, within both the legislative and judicial contexts, do not necessarily engender greater compliance within the mass public. Even cross-institutional differences in perceptions of fairness cannot account for the variance in willingness to comply. The effect of procedural concerns is greater among opinion leaders, but this is a relatively small segment of the population, and the research has not been able to address the processes through which opinion leaders affect the views of others.

Research based on actual litigation demonstrates a significantly greater effect of perceptions of procedural fairness (see Lind and Tyler, 1988). Perhaps losing in an actual dispute creates such cognitive discomfort and dissonance that individuals are compelled to claim some sort of satisfaction with the decision, even if it is only in terms of how the decision was made. In hypothetical disputes such as the one on which I have focused, this dissonance is surely not generated, making it unnecessary to seek solace through satisfaction with procedure. Moreover, since few have direct experience from which to judge the fairness of local courts, the local legislature, or the Supreme Court, the procedural measures are tapping only abstract views, which are notoriously poor predictors of behavior in actual controversies. Assessments of fairness grounded in experience are no doubt stronger predictors of compliance (cf. Tyler, forthcoming). These are just some of the ways in which the real and the hypothetical might diverge; there are many more that suggest caution in relying too heavily on the results of this analysis.

At the same time, it is not clear that we should generalize from litigant satisfaction with adjudicatory processes to the more general and diffuse world of politics. At a minimum, litigants are engaged in the dispute, with disengagement being a costly alternative. Citizens involved in civil liberties disputes can easily and relatively costlessly withdraw from the conflicts and resume a more normal position of apathy and complacency. To withdraw from litigation means losing; to withdraw from a political dispute may ac-

tually mean winning. Moreover, citizens do not bear direct responsibility for carrying the dispute in politics. It is possible, indeed profitable, to become a free-rider. As a consequence, the process of disengagement generates few costs. These differences in the types of disputes may well mean that procedural concerns are of lesser significance in politics than in the courthouse.

It is also unclear whether we should generalize these findings beyond the late 1980s. It is possible that the period of sustained judicial activism that the United States has witnessed since the 1960s has eroded any pre-existing abilities of courts to legitimize public policy. As Caldeira (1986) has shown, judicial activism seems to reduce support for the judiciary (but see Lehne and Reynolds, 1978). Perhaps this activism has exhausted stores of judicial legitimacy that prior to the 1960s were in fact adequate to legitimize public policy. If so, the differences we observe in this analysis may be considerably muted compared to earlier periods of American history.

The courts in the United States also have a special problem of legitimacy that makes them unlikely candidates for generating citizen compliance. The decisions of federal courts can always be challenged on accountability grounds. Because federal judges are appointed for life terms, they are not responsible to the electorate, and therefore their unpopular decisions are particularly vulnerable to charges of illegitimacy (cf. Cooper, 1988). At the same time, as the election of most state judges has made them more accountable through more competitive and more partisan campaigns, their basic fairness and impartiality have become suspect. Especially with the ticklish issue of campaign contributions from litigants (actual or potential), these courts have few reserves of legitimacy that they can share with other political institutions. Thus, whatever legitimizing ability the judiciary may have once had is likely to decline (cf. Caldeira and Gibson, 1989).

It seems that something other than procedures leads to acceptance of unpopular political decisions. What is it about the decisions of institutions that increases the likelihood of compliance? Institutional legitimacy is part of the answer, but there are several other possibilities. Citizens may simply comply with the decisions of political institutions out of fear of sanctions. As the dispute over housing integration in Yonkers, New York, in 1988 revealed, many citizens will not abide by bitterly opposed decisions without direct coercion. Perhaps what has been ascribed to legitimacy is actually best attributable to the coercive potential of political institutions (cf. Hyde, 1983).

More generally, compliance may be the result of rational calculations by citizens and may have little to do with a sense of obligation to countenance unpopular decisions. Coercion may be an important part of this calculus, but so too might estimates of the likelihood of reversing a political decision. Perhaps it is the final-



ity of the decisions of the Supreme Court that encourages citizens to comply, rather than any notion that the Court is an appropriate and proper institution or that its decisionmaking processes are fair.

Finally, one might question whether legitimacy is necessarily benchmarked by acceptance of unpopular decisions. Is the assertion by the attorney general of the United States that a Supreme Court decision is not the final and supreme law of the land a denial of institutional legitimacy? When a state legislator introduces a bill to require prayers in public schools, is this action a denial of Court legitimacy? Or when a presidential candidate calls for flag-salute legislation that appears to be inconsistent with prior Court decisions, is this a repudiation of the legitimacy of the institution? Perhaps all can agree that the *failure* to make this assertion or to introduce this bill or to call for such legislation might be indicative of institutional legitimacy, but challenges to public policy—whether that policy is made by courts or legislatures—are not so clearly evidence of threats to institutional legitimacy. In a polity that is ever changing, it seems unreasonable to use willingness to attempt to change public policy as an index of the illegitimacy of the institution.

From the point of view of civil liberties and political tolerance, these findings suggest that the intervention of courts and legislatures may have some limited effect on the willingness of citizens to tolerate their most hated political enemies. Yet it is hard to be sanguine on the basis of these findings. Despite a decision by the United States Supreme Court, a significant proportion of citizens is still willing to challenge the rights of political minorities. To the extent that this intolerance is neutralized, it is probably through a mixture of processes. Some accept the rulings of political institutions as authoritative; some view it as futile to pursue dissent any further, and some would attempt to change the decision were there a low-cost means of doing so. Whatever special legitimizing powers the courts have probably play only a minor role in the overall political equation.<sup>29</sup>

Perhaps the most important contribution of the judiciary under conditions of intense political conflict is that courts vastly slow the process of reaching a decision, thus allowing passions to subside. Courts also employ a language and process of decision-making to which ordinary citizens are not privy. The legitimacy of these institutions then is not marked by citizen willingness to comply with unpopular court decisions but is instead registered by citizen willingness to submit the issue to the courts in the first place.

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<sup>29</sup> However, since courts (especially the federal courts) are typically insulated from direct majority pressures for tyrannical policy, this finding of a slight difference may be of greater practical consequence. An institution that can influence the majority to accept unpopular decisions but that is relatively insulated from direct accountability to the majority can serve a very important function on the minority rights side of the democratic equation.

The manner in which political systems allocate freedom and justice, for the majority and especially for the minority, is of central importance in the study of politics. This analysis represents a small step toward understanding the complex processes whereby legal institutions can depend on fairness and legitimacy to control political intolerance, and ultimately to contribute to the maintenance of democracy.

#### APPENDIX: THE SURVEY DESIGN

The 1987 General Social Survey (GSS) was conducted in the spring with a response rate of approximately 75 percent. Its sample is a full probability sample. In June and July, the respondents in the 1987 GSS were resurveyed. Of the 1,466 subjects in the spring GSS, 1,106 were eligible to be interviewed. (NORC reserved approximately 350 respondents for possible use in future panel studies. These subjects were not eligible to be re-interviewed.) This subsample was selected randomly, within gender strata. Because the 1987 GSS cross-section had a relatively large differential non-response rate by gender, there is some gender imbalance in the pool of subjects eligible for the second interview. Consequently, stratified random sampling was thought desirable. For the re-interviews, males and females were selected with equal probability. Approximately 87 percent of these subjects were re-interviewed. Most of these were in-person interviews, although because some subjects had moved, a small percentage were conducted by telephone.

The 1987 GSS also included a special oversample of 353 black respondents, which was also a full probability sample. Extraordinary efforts had to be mounted to draw this supplementary sample: roughly five thousand households nationwide were sampled and contacted to locate the black subjects. Their response rate was 79 percent. All of these subjects were eligible for the re-interview, and re-interviews were successfully completed with nearly 90 percent of the black subjects in the original sample. The black oversample also overrepresents females. Because the universe of the black oversample was selected for the re-interview project, no sampling techniques could ameliorate this problem. Thus, interviews were completed with a total of 1,267 respondents. Since the sample is stratified by race, most analyses are conducted on weighted data.

Special thanks are due Tom Smith and Jim Davis, co-principal investigators on the GSS, and the GSS Board of Overseers for their assistance on this project. Dick Rubin at the NORC was instrumental in bringing the re-interview survey to its highly successful conclusion.

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