

*University of Southern California Law
School*

Legal Studies Working Paper Series

Year 2011

Paper 81

Lay Judgments of Judicial Decision-Making

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Lay Judgments of Judicial Decision-Making

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Accepted for publication in *Journal of Empirical Legal Studies*

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Accepted version, July 18, 2011.

Hosted by The Berkeley Electronic Press

Electronic copy available at: <http://ssrn.com/abstract=1888630>

Abstract

This exploratory study examined lay people's evaluations of judicial decision-making, specifically of the judicial decision-making process and the judiciary's legitimacy. Seven hundred participants were presented with three judicial decisions, which were portrayed as following on the heels of solid and appropriate legal procedure. Each decision was accompanied by one of four types of reasoning. Participants were asked to evaluate the acceptability of the decisions, focusing on the manner in which they were made and the legitimacy of the decision-maker, regardless of their outcomes. The study yielded four findings. First, lay people's judgments were highly contingent on the outcome of the judges' decisions. Consistent with the theory of *motivated reasoning*, participants found the decisions highly acceptable when they agreed with the judges' decision, but deemed them relatively unacceptable when they disagreed with them. Second, participants were indifferent to the modes of reasoning when they agreed with the outcomes of the decisions, but were differentially sensitive to the modes of reasoning when the judges' decisions frustrated their preferred outcomes. Third, when participants were sensitive to the modes of reasoning, they gave higher ratings of acceptability to decisions that openly admitted to good reasons on both sides of the case as compared with decisions accompanied by reasons that supported one side of the case exclusively. Giving no reasons at all was found to be more acceptable than giving a single, curt reason. Fourth, the findings replicated the *coherence effect*. Implications for the legitimacy of the judiciary are discussed.



Introduction

The legitimacy of the legal system constitutes a crucial condition for the possibility of an ordered society. The perennial concern is with the authority of the unelected judiciary to exert its powers in a legitimate manner (see e.g., Bickel, 1986; Breyer, 2010; Dworkin, 1986; Marmor, 2007). The American adjudicatory framework consists of institutions and practices that are designed to constrain judicial powers and conform them to the democratic system. One key feature of this framework is the imposition of an elaborate legal procedure that provides litigants with the opportunity to offer their proofs and arguments through adversarial advocacy before properly appointed and impartial judges (Fuller, 1978; Hart & Sacks, 1958/1994. *See also* Eskridge & Frickey, 1994; Waldron, 2011). A second feature of this framework is the centrality of *reasoned elaboration*. Judicial decisions are best appreciated when they are accompanied by reasoned opinions, which are based in turn on the proofs and arguments furnished by the parties (see Fuller, 1978; Waldron, 2011). As noted by Charles Fried (2000), giving reasons is part and parcel of the judiciary's authority: "The Court's exercise of power *is* its reasons" (p. 810). Wielding judicial authority unsupported by reasons is viewed as a mark of bad craft (see Schauer, 1995; Shapiro, 1992; Sunstein, 2007; Wechsler, 1959). Together, the twin constructs of sound procedures and reasoned elaboration are deemed a suitable antidote to decisions made by fiat or naked political preferences. A decision "which is the duly arrived at result of a duly established procedure for making decisions 'ought' to be accepted as binding upon the whole society." (Hart & Sacks, 1958/1994, p. 5).

The adjudicatory framework is the subject of extensive scholarly debate (e.g., Dworkin, 1986; Fuller, 1978; Kennedy, 1986). Yet, there has been little empirical research on how judicial decision-making is viewed by the general public, which is arguably the judiciary's most important constituent. This exploratory study seeks to provide insight into how lay people judge the acceptability of decisions made by courts, and how those judgments are affected by the reasoning offered by the judges.

One of the specific issues examined in this study concerns a style of reasoning that pervades the opinions rendered by American appellate courts. A most salient feature of

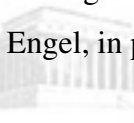
judicial opinions is that they are habitually overstated, one-sided, and lacking of any doubt (Simon, 1998). This form of *monolithic reasoning* is particularly intriguing given that disputes that reach high courts are typically fraught with complexity, conflict and uncertainty (see e.g., Schauer, 1988). Monolithic reasoning can be explained as a manifestation of the *coherence effect* which, as discussed below, is an intrapersonal cognitive feature of human reasoning and decision making. The acceptability of that form of reasoning by third parties was left for another day (Simon, 1998). This study begins to address that question by examining whether monolithic reasoning does in fact promote the acceptability of judicial opinions. Specifically, the study compares people's reactions to opinions that provide unequivocal support for just one side of the dispute and opinions that admit to the complexity and under-determinacy of the legal reasons en route to determining which of the vying positions is the stronger of the two. This question resonates with prior research on single-sided versus double-sided communications in the fields of persuasion and consumer behavior, which has borne mixed results (Allen, 1991; Hovland, Janis, & Kelly, 1953; O'Keefe, 1993). To the best of our knowledge, this question has not been tested experimentally in the context of legal decision-making.

There are reasons to suspect that lay people's judgments of judicial decision-making might be influenced by the construct of *motivated reasoning*. Research on motivated reasoning shows that people's reasoning processes are readily biased when they are motivated by processing goals other than accuracy. These "directional goals" pertain to any "wish, desire, or preference that concerns the outcome of a given reasoning task" (Kunda, 1990, p. 480). Distortions borne by motivated reasoning have been observed in a wide array of tasks, including the way people handle challenges to their competence (Wyer & Frey, 1983), perceive the performance of their preferred political candidate (Munro, Ditto, Lockhart, Fagerlin, Gready, & Peterson, 2002), judge the conduct of their sports team (Hastorf, & Cantril, 1954), predict their future performance (Boiney, Kennedy, & Nye, 1997), and assess the odds of winning a bet on a horse race (Brownstein, Read, & Simon, 2004).

Motivated reasoning influences not only the ultimate conclusion of a decision or inference, but also the procedures, methodologies or facts that underlie that judgment (Edwards & Smith, 1996; Taber & Lodge, 2006). For example, the landmark study by

Lord, Ross and Lepper (1979) examined people's judgments of social science research that purported to either support or refute the deterrent effect of the death penalty. The study found that people endorsed whichever methodology produced the result they were inclined to support, and rejected the methodology that led to the opposite conclusion. It has likewise been found that people tend to contest the validity of a (fictional) intelligence test when they receive an unfavorable result but accept it at face value when their scores are favorable (Wyer & Frey, 1983; Pyszczynski, Greenberg, & Holt, 1985), and to question a (fictional) medical diagnostic test when it indicates that they are susceptible to a disease, but accept it when it indicates good health (Ditto, Munro, Apanovitch, Scepanisky, & Lockhart, 2003). Jay Koehler (1993) has shown that social scientists are not immune from this form of bias (See also Kahan, Hoffman, & Braman, 2009).

Another psychological phenomenon that could play a role in evaluations of judicial decisions is the *coherence effect*. This basic-psychological phenomenon can be encapsulated by the Gestaltian notion that *what goes together, must fit together*. Complex tasks can be solved effectively and comfortably when they are derived from coherent mental models of the case at hand, that is, where the conclusion is strongly supported by the task's underlying factors. In legal decision making, these factors typically comprise of evidence and arguments. The cognitive system stamps out complexity and decisional conflict by imposing a state of coherence on the mental model of the task: strengthening the factors that support the emerging conclusion, and diminishing the contrary ones. Just as the inferences from the evidence and arguments guide the choice of the preferred conclusion, the emergence of that conclusion radiates backwards and reshapes those factors to become more coherent with it (for reviews, see Simon & Holyoak 2002; Simon 2004). The coherence effect has been observed in the making of decisions in both legal (Holyoak, & Simon, 1999; Simon, Snow, & Read, 2004a) and non-legal settings (Simon, Krawczyk & Holyoak, 2004b; Simon, Krawczyk, Bleicher, & Holyoak, 2008). Similar findings have been made by Glöckner and his colleagues (Glöckner & Betsch 2008; Glöckner, Betsch, & Schindler, 2010; Glöckner & Engel, in press).



The coherence effect would predict that the evaluation of the entire range of factors associated with a court's decision will cohere around global judgments of approval or disapproval. Thus, a decision that is deemed acceptable will be evaluated favorably across the board, as being thoughtful, persuasive, legitimate, and the like, and those judgments will cohere also with assessments of the legitimacy of the respective decision-maker. Conversely, decisions that are deemed unacceptable are more likely to be viewed as poorly decided all around.

Study Overview

In this study, lay participants evaluated three different legal decisions, made by an arbitrator, a judge, and an appellate court, respectively. In all cases, the procedures leading up to the decision were conducted in an adversarial manner, and were described as solid and appropriate. All decisions were issued two weeks after the hearing of the arguments. After reading about each case, participants were presented with a decision that was accompanied by one of four types of reasoning. Participants were asked to evaluate the manner in which the decisions were made, using ten different dependent variables pertaining to the quality of the decision-making process and to the legitimacy of the decision-maker. In doing so, participants were requested to ignore their preference for the outcome. Finally, participants were asked for their own preferred decision, that is, how they would have decided the case.

Method

Participants

Seven hundred people participated in the study. The sample was comprised of 375 (53%) females and 325 (47%) males, with a mean age 33.04 (*S.D.* = 16.71) and median 35 (range = 18-78; *IQR* = 18). Thirty percent of the participants described themselves liberal, 28.4% described themselves moderate, and 41.6% described themselves conservative. Three participants who were trained as lawyers were dropped from all analyses. Participants were recruited through an affiliate of the online survey company Qualtrics, which maintains a very large mailing list of individuals who have consented to participate in online studies in exchange for small fees or rewards.

Procedures and Design

Participants first read a consent form and then completed the study online by clicking through a series of webpages that contained a set of general instructions, followed by three legal cases that were presented in a randomized order. Each case contained a set of instructions, the case information, and the measures. At the conclusion of the study participants were thanked for their participation.

The design was a 2 (decision for either party) x 4 (four types of reasoning) between-subjects factorial, with participants being randomly assigned to one of eight possible conditions in each of the three studies. In half of the conditions, the judges favored one side of the dispute and in the other half, they favored the opposite side. The decision was accompanied by one of the four modes of reasoning: (1) no reasoning at all (“no reason” condition); (2) a single reason supporting the decision (“one reason” condition); (3) *monolithic reasoning*, that is, multiple reasons that supported the chosen decision only (“multiple one-sided” condition); and (4) multiple reasons that supported both sides of the dispute (“multiple two-sided” condition).

Prior to the elicitation of their responses, participants were reminded that they were being asked for their opinion of the manner in which the decision was made, not whether they agreed with the conclusion reached. They were again cautioned to ignore their agreement or disagreement with the conclusion.

After hearing the court’s decision, participants responded to ten items asking for their assessment of the acceptability of the decision. Some of the items pertained specifically to the decision-making process used in this case. For example, participants were asked “How satisfied are you with the manner in which the decision was made?” and “To what extent was the decision made thoughtfully?” Other items probed broader questions pertaining to the court and its legitimacy. For example, participants were asked “To what extent does the decision justify the authority given to courts to make these decisions?” and “How competent is this court?” All ratings were made on an 11-point likert scale, where (0) indicated negative values (e.g., “not at all satisfied”) and (10) indicated positive values (e.g., “extremely satisfied”). Five dependent variables were presented on two

webpages each. The order of the webpages and the order of questions within each page were fully randomized.

On a separate webpage, participants were asked to indicate their own decision (i.e., “If you had to decide the case, what would your decision be?”), followed by a measure of their confidence in that decision. To ensure that participants had paid attention to the case, two questions tapped their memory for facts mentioned in the vignette. Consistent with current practice (see Oppenheimer, Meyvis, & Davidenko, 2009), participants who failed to remember the facts correctly were removed from the analysis. Finally, participants provided demographic information.

Materials

The general instructions introduced the task to the participants. The key part of the instructions read as follows:

You will be asked for your opinion about each of these decisions.

We are not interested in whether you think that the actual outcomes of the decisions are right or wrong.

Rather, we are interested in your opinion about the manner in which the decisions are made. You will be asked questions about issues such as the thoughtfulness, rigor, and legitimacy of the decisions.

In evaluating the decisions, try to ignore your agreement or disagreement with the outcomes.

The next set of instructions was intended to convey information about the procedure that led to the decision. Participants were provided with a favorable account of the process. Specifically, they were told that all decisions followed the appropriate legal procedure, the cases were argued by competent lawyers, and the decision makers spent considerable effort thinking about the dispute. Participants were also informed that they were not required to have any legal knowledge, that there are no right or wrong answers to these questions, and that their responses should convey how they personally feel about the issues. Participants were then presented with the following three legal cases in a randomized order.

The Waste Disposal Corporation case

The *Waste Disposal Corporation* (WDC) case was based loosely on a 2001 decision of the United States Supreme Court (*Solid Waste Agency v. US Army Corps of Engineers*). The vignette described an appeal filed in a federal appellate court by a garbage disposal company. The company appealed a lower court's decision to uphold a decision by the Army Corps of Engineers to prevent the corporation from developing a landfill in an abandoned gravel pit. The Corps denied the permit because the site had become a habitat for migratory birds. The dispute revolved mostly around the statutory powers of the Corps in deciding such matters. Each of the sides presented three principal arguments to the court in support of its position. The complete text provided to the participants on this case is provided in Appendix 1.

After reading about the case, participants were presented with one of the eight possible decisions. The decision favored either the company or the Corps, and was accompanied by one of the four modes of reasoning. The supporting reasons simply paraphrased the arguments made by the parties' lawyers. The text containing the eight decisions in the WDC case is reproduced in Appendix 2. The same procedure was followed with the two other cases and the same dependent variables were used to assess participants' acceptability of the judges' decision making processes.

The Quest Case

The case of *Quest v. Smith* was an abbreviation of the materials used in previous research (Holyoak & Simon, 1999; Simon, Pham, Le, & Holyoak, 2001). Briefly, the case involved a libel suit brought by a corporation, Quest Technologies, against one of its investors, Jack Smith, for posting a derogatory message on an Internet message board. The corporation claimed that Smith's posting triggered a sell-off of its stock, which ultimately caused the company to crash. The case was decided by a judge. The fate of this suit hinged to a large degree on the legal precedent that governed the availability of libel liability for messages posted on the Internet. That issue entailed deciding whether the Internet is more similar to a newspaper (which traditionally is open to libel suits) or to a telephone system (where libel has traditionally been barred).

The Jason Wells Case

The case of Jason Wells was an abbreviation of the materials used in prior research (Simon, Snow, & Read, 2004). This case involved a decision by an arbitrator in a disciplinary procedure initiated by a construction company against one of its employees, Jason Wells. The company alleged that Jason Wells broke into the safe and stole \$5,200 from it. The evidence in this *whodunit* case was all circumstantial. This case involved only factual assessments, and did not contain any questions of law.

Results

Two of the dependent variables (probing the arbitrariness of the decision and the effort invested by the court) were insensitive to all of the experimental treatment and therefore dropped from the analysis (dropping these variables did not affect the significance of the findings). As the results were very similar for the five items that measured the quality of the decision-making process and the three items that measured the legitimacy of the courts, we collapsed all eight dependent variables into a composite measure which we call “decision acceptability.” The Cronbach alpha of the decision acceptability measure was .96. Since the results of all three cases are very similar, and for the sake of brevity, Figures 1 and 2, and Table 1 will present the combined results from all three cases.

Figure 1 shows clearly that the acceptability of the court’s decision was highly contingent on whether the court’s decision was congruent with the participant’s preferred decision. When the court’s decision was congruent with the participant’s preferred outcome, the decision was deemed highly acceptable, but when the court’s decision was incongruent, the decision was deemed considerably less acceptable, barely reaching the middle of the scale. This pattern was observed irrespective of whether the court’s decision favored the plaintiff or the respondent.

[insert figure 1 about here]



The effects of the judges' modes of reasoning are displayed in Table 1 and Figure 2. Table 1 contains the means (and standard deviations) of the acceptability rating for the four modes of reasoning in each of the three cases. The Table shows consistent findings across the three cases.

[insert table 1 about here]

Figure 2 displays the acceptability judgments for each of the four modes of reasoning, plotted separately for congruent and incongruent outcomes. The key observation from figure 2 is that when the participants' preferred outcome was congruent with the court's decision, participants appeared to be insensitive to the type of reasons given by the court. Yet, when the court's decision contradicted their preferred outcome, they were attentive to the reasoning offered. We now proceed to present the results in more specific detail for each of the studies separately.

[insert figure 2 about here]

The Waste Disposal Corporation case. 448 participants responded correctly to the knowledge tests and were included in the analysis. Just over half of the participants (56%, $n = 250$) decided the case in a manner that was congruent with the court's decision, and the remainder (44%, $n = 198$) arrived at a decision that was incongruent with the court's decision. The level of decision acceptability was highly dependent on the congruence between the participants' preferred outcome and the court's decision. Acceptability was high for congruent decisions ($M = 9.08$, $S.D. = 1.71$) but moderate for incongruent decisions ($M = 5.66$, $S.D. = 2.36$). This difference was highly significant $t(448) = 17.63$, $p < .001$.

We next examined the reported level of decision acceptability as a function of the four different types of reasons given by the court. A 2-way ANOVA detected a significant main effect for decision congruence $F(1, 448) = 329.4$, $p < .001$, a significant main effect for the type of reasoning $F(3, 448) = 4.56$, $p < .01$, and a significant interaction $F(3, 448) = 2.51$, $p < .001$. These results indicate that over and above decision

congruence, the reasons given had a significant effect on the acceptability ratings. A one-way ANOVA failed to detect any differences in the modes of reasoning when the decisions were congruent ($F(3, 363) < 1$). However, the test did detect a significant difference between the modes of reasoning when the court's decision was incongruent with the participant's preferred outcome $F(3, 251) = 4.50, p < .05$. Thus, participants were sensitive to the court's reasoning when they disagreed with the court's decision, but not when they agreed with it.

The results also demonstrated the coherence effect. As predicted by coherence based reasoning, participants' evaluations of the various measures of acceptability cohered with one another, yielding an average inter-item correlation $r = .744$ (the Cronbach alpha value is .958), and they cohered also with the participants' preferred outcome $r = .642, p < .001$. Consistent with coherence based reasoning, participants also reported high levels of confidence, regardless of their preferred outcome, with over 70% of participants reporting confidence levels of 8-10 (and only 30% reporting levels of 1-7).

The Quest Case

The results for the Quest case were virtually identical to the results of the WDC case. 614 participants responded correctly to the knowledge tests and were included in the analysis. 59% of participants ($n = 363$) chose the same decision as the judge, whereas 41% ($n = 251$) rendered decisions that were incongruent with the judge's. The ratings of acceptability were highly related to the congruence of the decisions. The mean acceptability rating was 8.85 ($S.D. = 1.67$) when the participants' preferred outcome was consistent with the court's decision, but only 5.36 ($S.D. = 2.38$) when the decisions were incongruent. This difference was highly significant $t(614) = 21.75, p < .001$. As for the reported level of decision acceptability as a function of the four different types of reasons, a 2-way ANOVA detected a significant main effect for decision congruence $F(1, 614) = 480, p < .001$ and a significant interaction $F(3, 614) = 2.8, p < .05$, but the main effect for reasons was not significant $F(3, 614) = 2.1, p = .095$. When the decisions were congruent, a one-way ANOVA failed to detect a significant difference between reasons $F(3, 363) < 1$, but there was a significant difference between the modes of reasoning $F(3, 251) = 2.64, p < .05$ when the decisions were incongruent. Thus, again, participants were

attuned to the judge's reasoning when they disagreed with the outcome of the decision, but not when they agreed with it.

The results also demonstrated the coherence effect. Participants' evaluations of the various measures of acceptability cohered with one another, yielding an average inter-item correlation $r = .765$ (the alpha Cronbach value was .962), and they cohered also with their preferred outcome, $r = .664$, $p < .01$. Participants also reported high levels of confidence, regardless of their preferred outcome, with over 60.4% of participants reporting confidence levels of 8-10.

The Jason Wells Case

346 participants responded correctly to the knowledge tests and were included in this analysis. Fifty-six percent of participants ($n = 192$) chose the same verdict as the arbitrator, whereas 44% ($n = 154$) gave verdicts that were incongruent with the arbitrator's verdict. Consistent with the previous cases, the level of decision acceptability was highly related to the congruence of the outcomes. The mean acceptability rating was 8.70 ($S.D. = 1.68$) and 4.32 ($S.D. = 2.1$) for congruent and incongruent verdicts respectively. This difference was highly significant $t(344) = 21.56$, $p < .001$. Unlike the other two cases, however, the Jason Wells case did not produce a significant difference in acceptability as a function of the type of reasoning, though the trend was consistent with the two other cases. Possible reasons for this discrepancy will be addressed in the Discussion section. Again, the results demonstrated the coherence effect. Participants' evaluations of the various dimensions of the decision cohered with one another, yielding an average inter-item correlation $r = .798$ (the Cronbach alpha value was .969), and they cohered also with their preferred outcome, $r = .758$, $p < .001$. Participants also reported high levels of confidence, regardless of their preferred outcome, with 49% of participants reporting confidence levels of 8-10.

Differences in Modes of Reasoning

To better analyze participants' responsiveness to different modes of reasoning, we combined the data from all three cases so that the new sample consists of $N = 1408$ responses (see Figure 2). Consistent with the findings from the individual studies, a one-

way ANOVA failed to detect any significant differences in the acceptability ratings as a function of reasoning for congruent decisions ($F(3, 804) = 1.71, p = .164$). However, significant differences were detected in the acceptability ratings as a function of reasoning for incongruent decisions ($F(3, 602) = 9.26, p < .001$). Thus, the following analysis will pertain to incongruent decisions only.

Overall, decisions accompanied by multiple two-sided reasons were rated most favorably ($M = 5.87, SD = 2.5$); decisions accompanied by multiple one-sided reasons ($M = 5.18, SD = 2.26$) and decisions that provided no reasons ($M = 5.11, SD = 2.42$) were rated approximately equal; while decisions accompanied by a single reason were rated least acceptable ($M = 4.47, SD = 1.99$). Two specific comparisons are of note. First, decisions accompanied by multiple one-sided reasons were rated significantly less acceptable than decisions with multiple two-sided reasons ($t(300) = -2.51, p = .013$). This finding calls into question the value of monolithic reasoning as a persuasive device. Second, decisions that gave no reasons were rated higher than decisions accompanied by a single reason ($t(299) = 2.49, p = .013$). In other words, it appears that under some conditions, giving a reason can make the decision less acceptable than giving no reasons at all.

Discussion

This exploratory study has produced four findings. First, we found that lay people's judgments of judicial-decision making are highly contingent on the outcome of the courts' decisions. Consistent with the theory of *motivated reasoning* (Kunda, 1990), judgments of the acceptability of the decision-making were overwhelmed by the congruence between the participants' preferred outcome and the outcomes of the judges' decisions (see also *myside bias*; Baron, 1995). In all three cases, the decisions were rated highly acceptable when the participants agreed with the judges' outcomes, but were deemed relatively unacceptable when they disagreed with them. These effects were obtained despite explicit instructions to focus on the manner in which the decisions were made and to disregard their outcomes.

The second key finding was the interaction between the congruence of the decisions and the type of reasoning on the acceptability of the decision. Participants were indifferent towards the modes of reasoning when they agreed with the outcome of the judges' decision, but were differentially sensitive to the judicial reasoning when the judge's decision frustrated their preferred outcome. This finding is consistent with the fact that motivated reasoning influences not only the ultimate conclusion of a decision or inference, but also the procedures, methodologies or facts that underlie that judgment (e.g., Edwards & Smith, 1996; Taber & Lodge, 2006).

Third, when participants were sensitive to the modes of reasoning, the following pattern of acceptability judgments were observed (in decreasing order): decisions that were accompanied by multiple two-sided reasons were rated most acceptable; decisions accompanied by multiple one-sided reasons (*monolithic reasoning*) were rated similarly acceptable to decisions that had no reasons at all; and decisions accompanied by a single reason received the lowest ratings of acceptability.

Fourth, we found high intercorrelation among the eight acceptability attributes that were measured. These attributes also correlated strongly with the congruence between the participants' preferred outcomes and the judges' outcomes. In other words, participants who held a favorable view of the decision tended to give high acceptability ratings to each and every one of the eight attributes. This finding thus replicates the *coherence effect* (Read & Simon, in press; Simon, 2004; Simon & Holyoak, 2002).

The study does not provide enough data to clarify why the different modes of reasoning did not significantly impact judgments of acceptability in the Jason Wells case. Recall that while the WDC and Quest cases revolved mostly around questions of law, the Jason Wells case consisted entirely of factual issues. One possible explanation is that lay people are more comfortable at deciding factual, as opposed to legal, matters, and are thus more likely to defer to judicial decisions that concern legal questions than factual determinations. This explanation is consistent with the fact that the acceptability ratings in the Jason case were overall lower than in the other two cases, especially for incongruent decisions. It is possible also that the participants were less deferential in the Jason Wells case because it was decided by an arbitrator, not a court. Clarifying this issue will require further experimentation.

The study also sheds some light on an intriguing phenomenon that has been dubbed *placebic reasoning*. Ellen Langer and her colleagues (1978) found that people tend to treat conduct as more acceptable when it is backed by reasons (as compared to no reasons being offered), even when the reasons are entirely redundant. In that study, confederates approached students waiting in line for photocopy machines at a university library and requested to advance to the front of the line (the confederates stated: “Excuse me, I have 5 pages. May I use the Xerox machine?”). The study found that compliance with the request was significantly higher when the confederate added a redundant, or *placebic*, reason for the request: “because I have to make copies.” (Langer, Blank, & Chanowitz, 1978). More recently, placebic information was found to be effective in enhancing lay people’s evaluations of neuroscientific research. The inclusion of fictional and irrelevant neuroscientific information in a behavioral research article rendered it more persuasive than when it lacked that information (Weisberg, Keil, Goodstein, Rawson & Gray, 2008). Other research, however, has not replicated the effect of placebic reasons (Lee, 2005). Our findings do not support the contention of Langer and her colleagues (1978) that giving *any* reason is deemed more acceptable than giving no reasons at all. In fact, decisions accompanied by no reasons were judged more acceptable than decisions accompanied by a single reason, and were deemed no less acceptable than decisions accompanied by multiple single-sided reasons. It follows that some forms of reasoning—notably, giving a singular curt reason—can actually hurt the acceptability of the decision.

Implications for the Legal System

These results call into question the judicial process’ ability to insulate reactions to its performance from the outcomes it produces. In other words, people do not comport to the credo that a decision “which is the duly arrived at result of a duly established procedure” will be deemed legitimate (Hart and Sacks, 1958/1994, p. 5).

This finding complicates our understanding of *procedural justice theory*. This influential theory postulates that adherence to appropriate procedures is a central factor in promoting the legitimacy of the exercise of power by governmental authorities. Procedural justice is said to be considerably more important than distributive justice, that is, the actual distribution of the verdicts (Lind & Tyler, 1998; Tyler, 1988, 2006). The

research showing that people's judgments of legitimacy are inextricably related to their perception of the fairness of the procedures is well established (Tyler 1988, 2004). And as our study did not manipulate the legal procedure followed in these cases, we do not challenge that relationship. Still, our findings of large differences in judgments of acceptability—while keeping the procedure invariant (and always favorable)—suggests that procedural justice accounts only for part of the picture.

Procedural justice theory has been put to the test by studies on *moral mandates*. That research shows that when people hold deep-rooted moral convictions (*e.g.*, strong beliefs about the issue of abortion, see Skitka, 2002), their sense of fairness is determined primarily by the outcomes of policy decisions, regardless of the fairness of the procedures (see Mullen & Nadler, 2008; Mullen & Skitka, 2006). Our finding is consistent with this body of work, and takes it even further. We found that decision outcomes made a considerable impact even in the absence of strong moral convictions regarding the issues at hand.

It seems safe to conclude that the legitimacy of the judicial process is a multi-determined construct, and that public reactions to judicial decision-making are influenced substantially by both the underlying procedure and the decision outcomes. We propose that to understand the legitimacy of courts, it is important to look beyond the procedures they follow. Typically, courts have little say in determining their procedures, and their procedural choices are likely too nuanced and obscured from the public eye to be appreciated by the general public. As a practical matter, courts are more likely to be evaluated by their most salient output: the decisions they render.

Our findings suggest also that lay people pay relatively little attention to the reasoning that judges offer, especially when they concur with the outcome of the court's decision. When participants were sensitive to the judges' reasons, they reacted differentially to the four types of reasoning provided. Notably, lay people do not endorse the pervasive *monolithic reasoning* by which courts tend to deny the complexity of the issue at hand and portray the decision as the unequivocal single right answer (Simon, 1998). Decisions accompanied by monolithic reasons (multiple, one-sided reasoning) were rated less acceptable than decisions accompanied by the more equivocal and nuanced form of reasoning (multiple, two-sided reasoning). Lay audiences thus appear to

appreciate a forthright exposition of the difficulties inherent in deciding human affairs, despite judicial protestations to the contrary. It follows that if judges seek to increase the legitimacy of their decisions in the eyes of the general public, they ought to reconsider their habitual form reasoning.

Limitations and Future Directions

This is a first experimental attempt to investigate a very complex issue. Naturally, the endeavor has its limitations, and the findings need to be replicated and extended. Future studies should consider comparing judgments by lay people with judgments by legal professionals. That comparison should explore the possibility that the pervasive monolithic reasoning is better accepted by legal professionals. After all, the primary means of acculturation in American legal education is by emulating the reasoned opinions offered by courts, primarily the United States Supreme Court. It would also be informative to explore the effect of decisions made by courts of different levels of authority, to replicate the study with richer materials that contain more intricate reasoning, and to test decision making in non-judicial contexts, such as in politics and business.

All in all, the observed effects of decision outcomes do not seem encouraging for the rule of law. Despite the great efforts to insulate judicial decision-making from the satisfaction or displeasure with the outcomes of the decisions it makes, motivated reasoning seems rather rampant in lay people's judgments of the endeavor. The prospect of the judiciary losing its legitimacy is of course a serious concern for the maintenance of the rule of law (Nadler, 2005; Robinson & Darley, 1995; Tyler, 2006).

At the same time, it should be acknowledged that the judiciary's legitimacy might be more resilient than what can be inferred from our study. First, lay judgments of the judiciary are not necessarily based only on the decisions it makes or even on the appropriateness of its decision making process. It is quite possible that public opinion of the judiciary feeds off other features of the judiciary, including the symbolism of the institution, the felt need for a final arbiter, and the judicial appointment process (see e.g., Gibson & Caldeira, 2009). Second, it is possible that lay judgments of judicial decision-making are not derived directly from the decisions themselves. Rather, the public's

judgments may be mediated by professional legal commentators who communicate judicial decisions and comment on them in the media. These legal professionals might well be more sensitive to procedural fidelity and legal reasoning, and are less swayed by the decisions' outcomes. The mediation by legal commentators might lead to more principled judgments of judicial decision-making by the lay public. This prospect calls for future experimentation.



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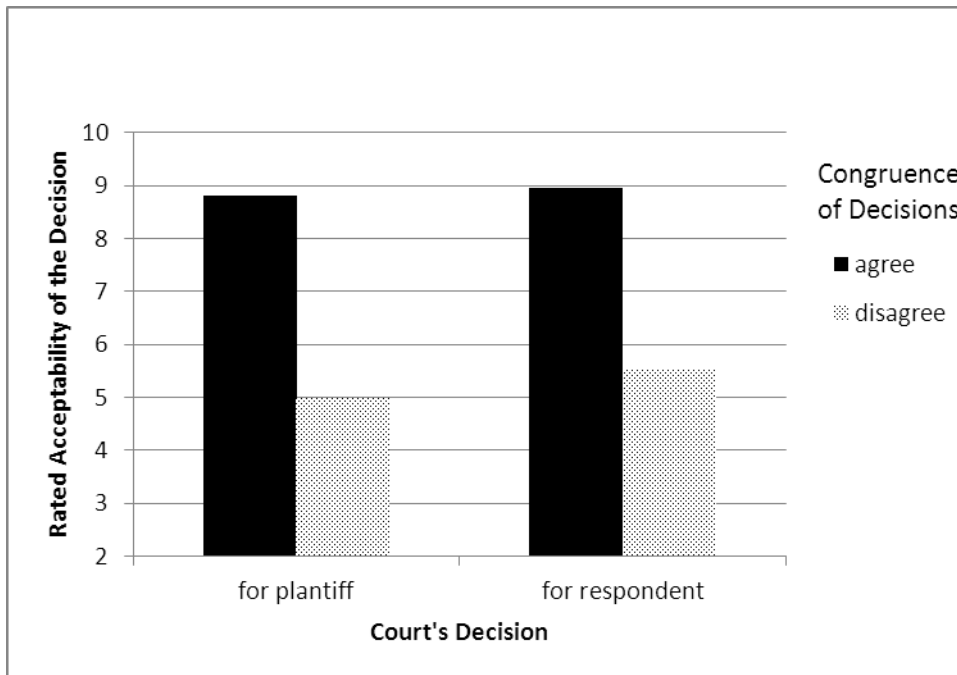


Figure 1. *Mean acceptability ratings as a function of the court's decision and its congruence with the participant's preferred outcome (all three cases combined). Ratings are high when the participants agreed with the courts' decisions, but only moderate when they disagreed with the decisions.*

Note: Plaintiffs include: The Waste Disposal company; Quest Technologies; and Jason Wells employers. Respondents include, respectively: The Government; Jack Smith; and Jason Wells.

WDC

Reasons Given	Congruence of Decisions	
	agree	disagree
none	8.9(1.5)	5.4(2.3)
single	9.2(1.5)	4.9(2.3)
multi one-sided	8.9(2.3)	5.7(2.4)
multi two-sided	9.4(1.3)	6.5(2.3)

Quest

Reasons Given	Congruence of Decisions	
	agree	disagree
none	8.8(1.6)	5.3(2.6)
single	8.9(1.8)	4.6(1.8)
multi one-sided	9.0(1.4)	5.4(2.2)
multi two-sided	8.9(1.9)	5.8(2.5)

Jason

Reasons Given	Congruence of Decisions	
	agree	disagree
none	8.3(1.6)	4.4(2.1)
single	8.7(1.9)	3.9(1.8)
multi one-sided	8.8(1.9)	4.3(2.0)
multi two-sided	9.0(1.3)	4.8(2.5)

Table 1. Mean Acceptability Rating Broken Down by Experimental Condition for Each Individual Case. The ratings are consistently higher when the participants agreed with the courts' decisions, and consistently lower when they disagreed with the decisions.

Note: Parentheticals indicate one standard deviation.



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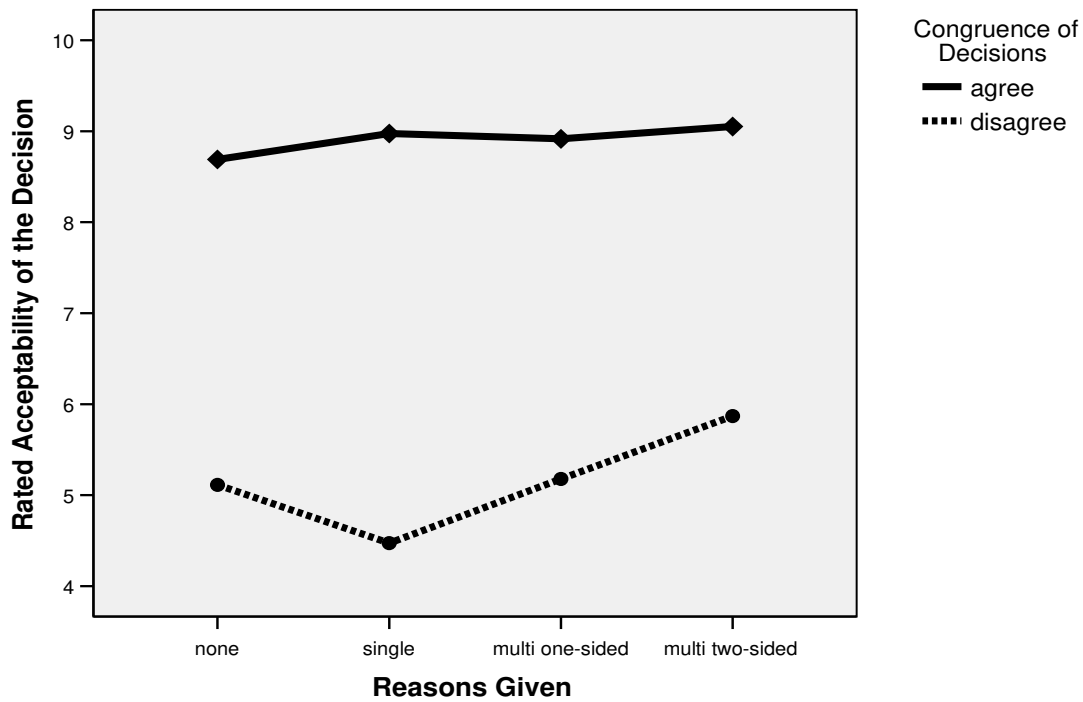


Figure 2. Mean acceptability ratings as a function of verdict congruence and reasoning (all three cases combined). When participants agreed with the courts' decisions, the acceptability ratings were high and insensitive to the type of reasoning given. However, when the participants disagreed with the courts' decisions, the decisions were deemed considerably less acceptable, and the reasons given did have a differential effect on the acceptability ratings.

Appendix 1

The case of the Waste Disposal Corporation

In this case, the Waste Disposal Corporation is appealing a decision by the Army Corps of Engineers to deny it a permit to develop a landfill on a particular parcel of land.

The corporation sought to develop the site after existing landfills near a large mid-western city were filling up. The new site was planned to be placed on an abandoned gravel pit, located in a region of marshland. Parts of the pit are covered by permanent ponds, which are connected to an adjacent lake through a seasonal river. For about two months of the year, the river is used by sport fisherman and leisure boaters to access adjacent bodies of water.

The corporation received an approval for the development of the landfill from the county planning committee. However, the Army Corps of Engineers denied them the permit.

The Army Corps of Engineers explained that the site had become a central habitat for migratory birds. The decision was intended to protect that habitat. That habitat was essential also for a state-sponsored bird-watching center that was planned to be established at the site.

The Army Corps of Engineers claimed jurisdiction over the site based on the federal Clean Water Act, which authorized it to issue permits for the discharge of fill material into all “navigable waters of the United States.”

Over the few previous years, the Army Corps of Engineers had issued regulations that extended its jurisdiction to a wide range of bodies of water. These regulations defined the term "navigable waters" to include “intermittent rivers and streams, tributaries, isolated lakes and wetlands, and prairie potholes.” An attempt by some members of Congress to repeal these regulations failed to pass as law.

At the hearing, the court was presented with a variety of legal arguments from both parties.

The key arguments made by the lawyers of the Waste Disposal Corporation were as follows:

1. The Army Corps of Engineers had no jurisdiction over the particular site. As the site contained only an isolated body of water, it could not be classified as a body of “navigable water.”

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2. The legislative failure to limit the broad authority claimed by the Army Corps of Engineers does not mean that Congress condoned that broad authorization. It is a well established rule that a legislative failure does not amount to an endorsement of the opposing position.

3. The denial of the permit is bound to cause the region considerable hardship because there were no viable alternative sites for the development of the new landfill.

In defending the Army Corps of Engineers' decision, the federal government argued the following:

1. The Army Corps of Engineers did have jurisdiction over the particular site. The site was connected with adjacent bodies of water by a seasonal waterway, which made it a "navigable" body of water.

2. Congress' refusal to repeal the regulations that extended the jurisdiction of the Army Corps of Engineers indicates that it endorsed that broad authorization.

3. There is no basis to determine the impact of the denial of the permit on the region. The corporation did not submit to the court any surveys or environmental impact reports about alternative sites.

Appendix 2

The court's decision: The following contains the four decisions denying the appeal. A similar set of decisions accepted the appeal. Each participant saw only one of the eight possible decisions. The labels are presented here for clarification purposes; they were not exposed to the participants.

1. No Reason:

"We have decided to accept the appeal filed by the Waste Disposal Corporation. We therefore invalidate the decision to deny the corporation the permit to develop the landfill at this site."

2. Single Reason:

"We have decided to accept the appeal filed by the Waste Disposal Corporation.

Our verdict is based on the conclusion that the Army Corps of Engineers lacks authority over the proposed site.

We therefore invalidate the decision to deny the corporation the permit to develop the landfill at this site.”

3. Multiple, One-Sided Reasons:

“We have decided to accept the appeal filed by the Waste Disposal Corporation.

Our verdict is based on the following conclusions. The Army Corps of Engineers had no jurisdiction over this matter, as the site could not be classified a body of “navigable water.” Congress’ failure to limit the authority of the Army Corps of Engineers over this type of land did not amount to an endorsement of that authority. Due to the unavailability of alternative sites for waste disposal, the denial of the permit will inflict considerable hardship on the region.

We therefore invalidate the decision to deny the corporation the permit to develop the landfill at this site.”

4. Multiple, Two-Sided Reasons:

Two weeks after hearing the arguments, the court announced its decision. The written decision is stated as follows:

"We must acknowledge that both sides have produced strong arguments.

As there is doubt whether this site could be classified a body of “navigable water,” it is not clear that the Army Corps of Engineers had jurisdiction over the particular site. Congress’ failure to limit the authority of the Army Corps of Engineers over this type of land did not necessarily amount to an endorsement of such broad authority. A lack of alternative sites for waste disposal could make the denial of the permit detrimental to the people of this region.

On the other hand, the seasonal river that connected the site to other bodies of water would seem to make it a “navigable” body of water. That would give the Army Corps of Engineers jurisdiction over this matter. The fact that Congress failed to repeal the regulations extending the authority of the Army Corps of Engineers could viewed as an indication that Congress endorsed them. As the corporation did not submit any surveys or environmental impact reports about alternative sites, it is difficult to assess what impact the denial of the permit would have on the region.

On balance, we decide that the corporation’s case is stronger.

We therefore invalidate the decision to deny the corporation the permit to develop the landfill at this site.”



Accepted version, July 18, 2011.

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