

Measurement and Judicial Legitimacy: Legitimacy as an Input and Output of the Separation of Powers

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 - ① Legitimacy is often presented as a fixed and implied aspect of the country-level context.
 - ② Judicial scholars have assumed that a court's legitimacy is relatively static overtime.
 - ③ Unlike judicial independence, there is still little consensus on what constitutes a useful cross-national measure of judicial legitimacy.

Structure of Talk

- 1 Discuss various conceptualizations of judicial legitimacy
- 2 Present of a research design to test concepts of judicial legitimacy derived from these four approaches.
- 3 Describe of data and statistical model that we will use to test four concepts of judicial legitimacy.
- 4 Present Findings
- 5 Discuss Implications of the Research

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- Gibson and Nelson (2014, 215) point out “the most pressing need for those seeking to understand judicial legitimacy is data capable of supporting dynamic analysis.”
- Four approaches have been used to approximate judicial legitimacy cross-nationally:
 - ① Institutional commitment-diffuse support
 - ② Confidence in the judiciary
 - ③ Divergence of the court from political institutions
 - ④ Procedural justice as legitimacy.

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- This institutional commitment might also contain a commitment to recognize the judiciaries independence (Gibson and Nelson 2015).

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- Confidence is mostly specific support (Gibson Caldeira and Spence 2003)

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- The relationship between assessment of procedural justice and legitimacy is robust across legal and political environments (Tyler 2006).
- Perceptions of administrative fairness in the justice system as a reliable proxy for judicial legitimacy.
- Criticism: Individuals are more likely to generate perceptions of fairness based on their support for the institution (Gibson 1989; Mondak 1993).

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- Walker 2016 uses absolute difference to gage how individuals separate their judicial evaluateion from their evaluations of the legislature

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- A judiciary that has greater legitimacy will have greater discretion in decision making.
- Greater legitimacy empowers courts to vote their sincere preference

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- Clark (2009, 977) offers hypotheses in terms of interaction between court curbing and public support with two pre-conditions:
 - ① the position of actors must be public (the court, the legislature and the executive)
 - ② the court must be aware that the visibility of the position of actors reflect on its public support.

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 - ② H2: Divergence Hypothesis: The Court is more likely to vote its sincere preference as public support for the court diverges from public support more political institutions.
 - ③ H3: Institutional Commitment Hypothesis: Courts will vote its sincere preference as its public support increases.

Conditions in Reelection Vote

Country and Year	Preference		Judicial	L_C	Reelection	Vote
	Independence	Ideology	Vote		Y/N	
<i>Legislature in Accord</i>						
Argentina 1994	0.425	0.667	0	0.934	N	none
Bolivia 2009	0.490	1.000	0	0.675	N	none
Ecuador 2008	0.434	1.000	0	0.694	N	none
Ecuador 2014	0.407	1.000	1	0.801	Y	9-0
Colombia 2005	0.421	0.111	1	0.401	Y	5-4
Columbia 2010	0.470	1.000	1	0.677	N	7-2
Honduras 2015	0.398	0.500	1	0.787	Y	6-0
Nicaragua 2014	0.619	0.500	0	0.673	N	none
Peru 1993	0.211	1.000	0	0.515	N	none
Peru 1997	0.276	1.000	1	0.781	N	3-2*
Venezuela 1999	0.433	0.000	0	0.535	N	none
Venezuela 2009	0.312	1.000	0	0.880	N	none
<i>Legislature Divided or Opposed (Discord)</i>						
Bolivia 2013	0.526	0.000	1	0.558	Y	7-0
Costa Rica 2000	0.922	0.570	1	0.856	N	4-3
Costa Rica 2003	0.919	0.000	1	0.683	Y	7-2
Guatemala 1990	0.308	1.000	1	0.630	N	9-0
Guatemala 1995	0.348	0.000	1	0.552	N	13-0
Guatemala 2003	0.435	0.285	1	1.020	Y	4-3
Honduras 2009	0.387	0.533	1	1.098	N	15-0
Nicaragua 2009	0.575	1.000	1	0.695	Y	6-0
Paraguay 2011	0.588	0.222	0	0.595	N	none
Peru 2000	0.355	1.000	0	0.604	N	none

Reelection and Measures of Legitimacy

Country and Year	Institutional Commitment = Perceived Independence	Judicial Confidence	Divergence = Judicial Separation	Procedural Justice = Fair Justice
<i>Legislature in Accord</i>				
Argentina 1994	-0.023	0.005	0.510	-0.062
Bolivia 2009	-0.372	0.027	0.430	-0.258
Ecuador 2008	-0.401	-0.175	0.226	-0.350
Ecuador 2014	-0.057	0.086	0.300	-0.340
Colombia 2005	0.001	0.084	0.329	-0.104
Columbia 2010	0.029	0.258	0.399	0.159
Honduras 2015	-0.172	-0.130	0.305	-0.171
Nicaragua 2014	-0.315	0.016	0.405	-0.170
Peru 1993	-0.215	0.001	0.515	-0.180
Peru 1997	-0.215	-0.061	0.410	-0.221
Venezuela 1999	-0.272	0.160	0.535	-0.092
Venezuela 2009	-0.573	0.188	0.523	-0.101
<i>Legislature Divided or Opposed (Discord)</i>				
Bolivia 2013	-0.086	-0.001	0.460	-0.226
Costa Rica 2000	0.401	0.398	0.820	0.280
Costa Rica 2003	0.115	0.366	0.776	0.328
Guatemala 1990	-0.344	0.138	0.224	-0.116
Guatemala 1995	-0.344	0.138	0.290	-0.116
Guatemala 2003	-0.344	-0.026	0.264	-0.190
Honduras 2009	-0.115	0.062	0.323	-0.179
Nicaragua 2009	-0.344	0.003	0.303	-0.170
Paraguay 2011	-0.458	-0.070	0.278	-0.247
Peru 2000	-0.430	-0.156	0.333	-0.350

Modeling Decision-making on Highly Political Questions

- We model the Vote on reelection as a function of the judicial legitimacy, the judiciary's preference on reelection (judicial independence), and relative strength of the legislature.
- we standardize the four Judicial Legitimacy measures to place them on similar scales. The measures range from -1.65 to 2.75.

Table: Theoretical and Analytical Relationships and Expectations

Variable	Institutional Commitment	Judicial Confidence	Divergence	Procedural Justice
Judicial Legitimacy	Positive	Negative	Negative	Negative
Judicial Preference	Positive	Positive	Positive	Positive
Legitimacy*Preference	Negative	Positive	Positive	Positive

Statistical Model: Bayesian Hierarchical Logistic Regression Model



$$y_i \sim \text{Bernoulli}(\theta_i),$$

- and latent variables $\phi(\theta_i)$, with ϕ being the logit link function:



$$\phi(\theta_i) = X_i\beta + W_i b_i + \varepsilon_i$$

Statistical Model

- Each group i has k_i observations.
- The random effects take the form $b_i \sim \mathcal{N}_q(0, V_b)$
- The over-dispersion terms are given by $\varepsilon_i \sim \mathcal{N}(0, \sigma^2 I_{k_i})$
- We use a standard conjugate prior ($\beta \sim \mathcal{N}_p(\mu_\beta, V_\beta)$).
- We estimate the model in R using MCMCpack (Martin, Quinn and Park 2011) and obtain the posterior means, standard deviations, and 90% Bayesian credible intervals.

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- Judicial Legitimacy/Judicial Preference interaction affects the Yes vote on reelection in three of the four model
- The Institutional Commitment model produces the best overall fit ($D=20.6$) in comparison to the three other models.

Actual Relationships Yes Vote on Reelection

Variable	Institutional Commitment	Judicial Confidence	Divergence	Procedural Justice
Judicial Legitimacy	Positive(Yes)	Negative(Yes)	Negative(Yes)	Negative(Yes)
Judicial Preference	Positive(Yes)	Positive(No)	Positive (No)	Positive(No)
Legitimacy*Preference	Negative(Yes)	Positive(Yes)	Positive(No)	Positive(Yes)

Bayesian Hierarchical Logistic Regression Models

Parameter	Judicial Legitimacy = Perceived Independence (Institutional Commitment)		Judicial Legitimacy = Judicial Confidence (Specific Support)	
	post mean(sd)	90% BCI	post mean(sd)	90% BCI
	Fixed Effects		Fixed Effects	
Intercept	-7.855(5.362)	[-17.17: 0.36]	-4.247(4.203)	[-11.73: 1.92]
Judicial Legitimacy	6.426(2.965)	[2.02: 11.89]	-8.712(6.231)	[-20.27: -0.70]
Judicial Preference	15.575(8.133)	[3.80: 30.56]	8.498(7.211)	[-2.09: 21.33]
Legislative Strength	-0.393(4.351)	[-7.96: 6.73]	-1.447(4.233)	[-8.40: 5.46]
Preference*Legitimacy	-11.206(5.172)	[-20.54: -3.59]	-20.148(14.459)	[2.11: 47.25]
Deviance	20.645(4.931)	[13.15: 29.15]	22.688(5.565)	[14.10: 32.22]

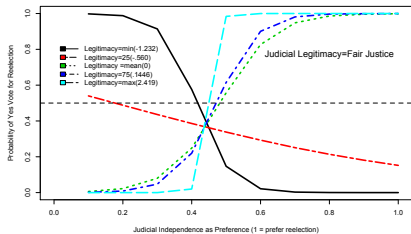
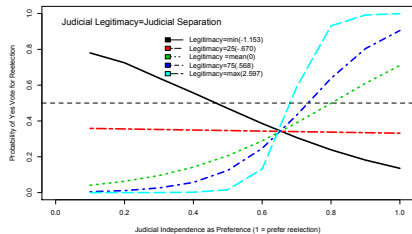
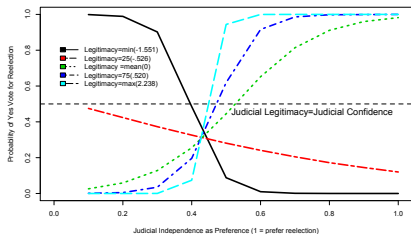
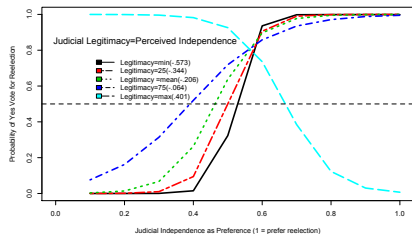
Bayesian Hierarchical Logistic Regression Models

Parameter	Judicial Legitimacy = Judicial Separation (Divergence)		Judicial Legitimacy = Fair Justice (Procedural Justice)	
	post mean(sd)	90% BCI	post mean(sd)	90% BCI
	Fixed Effects		Fixed Effects	
Intercept	-2.429(3.360)	[-9.19: 3.44]	-6.429(5.543)	[-16.44: 1.32]
Judicial Legitimacy	-4.520(2.855)	[-9.14: -0.16]	-12.185(9.213)	[-29.42: -1.60]
Judicial Preference	4.494(5.617)	[-3.98: 14.10]	13.366(10.537)	[-0.57: 32.35]
Legislative Strength	-2.276(4.244)	[-9.17: 4.48]	-1.358(4.521)	[-8.74: 6.04]
Preference*Legitimacy	6.904(4.988)	[-0.56: 15.13]	-27.595(20.943)	[3.11: 67.36]
Deviance	23.555(5.181)	[16.19: 32.41]	22.191(5.740)	[13.53: 32.30]

Institutional Commitment Findings

- 1 We test H3, the Institutional Commitment Findings
 - 1 We posit that more independent courts prefer reelection.
 - 2 The estimate of the interaction between Legitimacy and Independence is in the expected direction and reflects strategic behavior on the part of the court.
 - 3 As judicial independence and judicial legitimacy increase together, the court becomes more likely to vote against its preference.
 - 4 Low legitimacy courts conform to Helmke's (2005) argument that judge's in a nothing-to-lose position are free to vote sincerely.

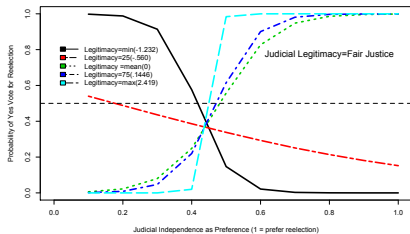
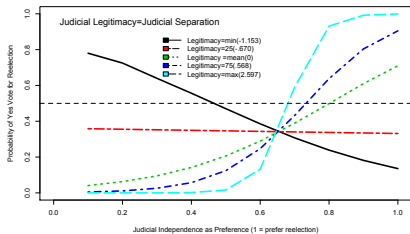
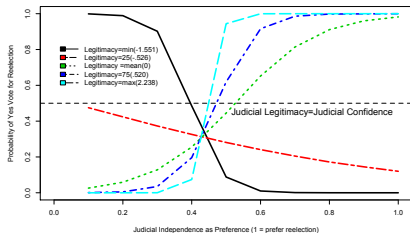
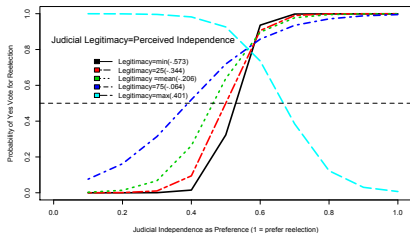
Posterior Estimates of Simultaneous Choice Vote on Reelection (Yes)



The Antecedents to Legitimacy Findings

- 1 Applies to the Judicial Confidence Model and the Procedural Justice Model.
 - 1 Judicial Confidence and Fair Justice have a positive effect on the court voting No (as oppose to Yes)
 - 2 The main effect of Judicial Preference (Independence) has no influence on the No/Yes choice.
 - 3 The interaction between Legitimacy and Preference has a positive effect on voting Yes)
 - 4 The court is more likely to vote its sincere preference as public support for the court increases.
 - 5 When higher legitimate court have higher levels of independence, they are more likely to vote Yes on reelection.

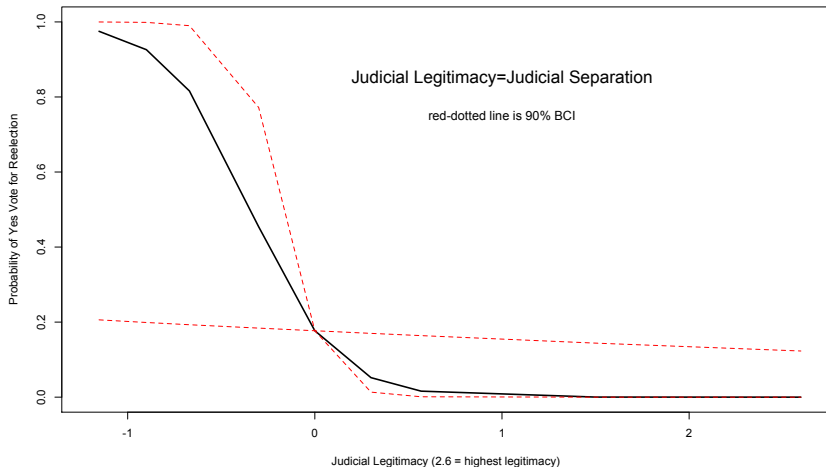
Posterior Estimates of Yes Vote on Reelection



Divergence as Legitimacy Findings

- 1 Applies to the Judicial Separation Model
- 2 Only the main effect of Judicial Legitimacy produces a posterior distribution and Bayesian Confidence Interval that does not contain 0
- 3 The interaction between Separation and Independence is insignificant, but in the correct direction.

Posterior Estimate Judicial Separation Effect on Yes Vote



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- 4 The Divergence approach to legitimacy is a different antecedent to institutional legitimacy.
- 5 Our proxy measure for institutional legitimacy produces dramatically different results than the other three approaches.
- 6 Investigators must be very explicit about the assumptions that they are making about Legitimacy when they use these measures.