

This paper will serve as a mass-centric approach to the study of the rule of law, and in what manner is human nature equipped to support it. This paper will propose that support for the rule of law at the mass level is based in self-interest and rational choice, further, I will postulate that the rule of law is not an intrinsic value embedded in our psyche, but a socially constructed practice.

**Comment:** This is a really nice first paragraph – the last sentence, though is a run-on. Of course, as I said, I do not count off for such things.

It would make it interesting if you were to lay out what difference it makes to focus on a micro versus macro analysis specifically. Or you could just defend your decision to focus on the macro level – by saying that this is what matters in the end anyway for whether the rule of law is upheld – what is missing from not focusing on the micro level?

Before we entertain a discussion on how human nature can support the rule of law, we must have a brief discussion on justice, or more precisely, how humans perceive the ideals of justice. For this section of the paper I will make two primary assumptions. First, the ideal of justice is a purely social in nature. That is, justice is an external application of morality, and that in the absence of company injustice is not possible because one cannot do an unjust act to oneself. My second assumption is this, neither justice nor injustice (especially relational/ procedural<sup>1</sup> forms of justice) can occur until they are labeled as such by the society in which they occur.

**“The...Passions of man, are in themselves no sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them...”** Hobbes, *The Leviathan*<sup>2</sup>

**Comment:** This makes me laugh out loud – this is terrific – but obviously you know about my Hobbes obsession. 😊

In order for the rule of law to exist both the elites, and the mass populace must abide by procedural forms of justice that may not coincide, and are often in conflict with distributive ideals of justice. In the article *Super ordinate Identification, Subgroup Identification, and Justice concerns*<sup>3</sup> the authors hypothesize that acceptance of procedural justice occurs when the individual has a sufficiently high level of identity within the super ordinate social group. This article also states that persons without a

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<sup>1</sup> Relational/ Procedural justice refers the process and institutions that enforce justice. For the remainder of this paper I will only use Procedural.

<sup>2</sup> This Quote appears in CH 10 of *With Malice Towards Some*

<sup>3</sup> This article is presented by Yuen J. Huo, Heather J. Smith, Tom R. Tyler, and E. Allan Lind

super ordinate group identity, or separatists will pose a problem to social cohesion and the rule of law because their primary concern will be on distributive justice. While I believe it to be true that a strong social identity with the super ordinate group is a good predictor of whether or not an individual will submit to the laws initiated by the elite's, I believe this argument to be woefully insufficient at examining why the super ordinate group would respect the rule of law as it pertains to the sub group. Wiengast<sup>4</sup> is able to illustrate that in the mid 1680's a coalition was unofficially formed between the King of England and the Tories (the super ordinate group), this coalition was in fact a tyranny of the majority and its purpose was to abrogate the Whigs (the sub ordinate group) right to representation within Parliament by making a number of extra legal transgressions against them. This example illustrates that there exists no natural connection between super ordinate group identification and respect for procedural forms of justice.

**Comment:** No apostrophe

**Comment:** Excellent integration of the articles – this is very well thought out and impressive.

In sum, there seems to be no connection between intrinsic values and procedural justice for either the elite's, or the mass population (regardless of sub, or super ordinate group identification).

**Comment:** A nice thing to do here is make explicit how this point connects to your main argument – I see the connection but a good writer makes it explicit so that your reader doesn't have to do all the thinking.

For the next section of this paper I will focus my analysis on potential motives for the mass populations<sup>5</sup> support and enforcement of the rule of law. I will make two assumptions for my analysis on the mass's behavior and support for the rule of law.

**Comment:** Use a different word if you are going to use the possessive form.

First, mass support for the rule of law must be rooted in self-interest and rational choice theory, or at least bounded rationality. Second, the individuals and social groups that

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<sup>4</sup> This argument is presented in his article *The Political Foundations of Democracy and the Rule of Law*

<sup>5</sup> I will no longer differentiate between sub, and super ordinate group identification within the mass populace.

make up the mass population will have different ideals on what government should be and do.

According to rational choice theory there must exist a positive cost vs. benefit ratio in order to motivate people to action, as an expectancy of zero units of gain do not warrant more than zero units of effort. Active support for the rule of law may induce a variety of positive benefits for both the individuals involved in group action, and for the group as a whole. As is postulated in the Accessible Identity Model<sup>6</sup> humans have three salient characteristics that are propagated by three different moral schemas. The three salient characteristics are material identity, social identity, and personal identity. The three moral schemas that propagate these aspects of identity are the self-interest moral schema which is the first to develop, the conventional norms schema which is second in line to develop and usually arises in early adolescence, and finally, the post conventional schema which is the internalization of normative values that are not clearly defined by society. The principle motivations for each of the three previously stated identities are as follows.

- 1) When Material identity is predominate the primary factor for influencing action is the possibility of material and economic gain<sup>7</sup>. When this identity is predominant other factors are secondary. From this one expect a preference for procedural interest only so long as it coincided with their best self-interest.
- 2) When Social identity is predominant<sup>8</sup> the primary motivation for action is a violation socio-emotional outcomes such as social standing and status. From this a preference for procedural justice exists so long as it is conducted with a level of benevolence, neutrality, and status recognition<sup>9</sup>

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<sup>6</sup> For the remainder of the paper I will refer to this model as the AIM. This model was introduced by Linda J. Skitka in her article *Of Different Minds: An Accessible Identity Model of Justice Reasoning*.

<sup>7</sup> Much like Adam Smiths “Economic man”

<sup>8</sup> The author notes this is a particularly strong attribute of identity.

<sup>9</sup> This is from Huo, Smith, Tyler, and Lind

- 3) When Personal identity is predominant status recognition, and equity rule will be secondary to the perceived fairness in which they were able to pursue personal goals such as achievement. “People can only make an internal attribution for an achievement if it is the result of an accurate (fair) procedure...” (Skitka)

Collective action as a result of material concerns is the least likely of the above

mentioned three identity characteristics to mobilize the mass population in order to enforce the rule of law. This is because in any form of collective action, individual participation virtually always has a zero level of observable impact on the outcome. This is significant because it encourages “free riders”<sup>10</sup>.

**Comment:** OK but what inference do you draw from this evidence?

**In large groups, such as those involved in collective protest, the contribution to the action of each ordinary member...has no discernable impact on the group’s overall success; therefore, the rational individual will not absorb the costs of participation (such as time, financial resources, or the threat of physical injury), since he or she will enjoy the public good in any case if others provide it.”** (Gibson)<sup>11</sup>

As a result of bounded rationality<sup>12</sup> there exists the distinct possibility that humans cannot in all circumstances maximize their utility, this cannot be done because of beliefs that go against actual rationality, and possible gaps in knowledge that would hinder rational choice. In the case of the 1991 Soviet Putsch, Gibson asked the question “whether failure to participate would have little or no effect on the outcome...most people rejected this notion that their behavior did not matter.”<sup>13</sup>. We see similar seemingly irrational actions in other liberal democracies, in the case of voting.

From the information above we can presuppose that personal participation in coordinated political activities on the belief that as an individual the protestor will make

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<sup>10</sup> The term free riders refers to those who do not participate in any form of collective social movement but wish to reap the benefits.

<sup>11</sup> James L. Gibson *Mass opposition to the soviet Putsch of August 1991: Collective Action, Rational Choice, and Democratic Values in the Former Soviet Union*

<sup>12</sup> Simon Herbert (1957) *A Behavioral Model of Rational Choice*

<sup>13</sup> In this case 1/4 said they believed their actions would have little or no consequence, the other 3/4 believed

some difference is not a product of rational choice, but bounded rationality. Conversely to the previous statement, there exists the possibility that individuals who reported that they were in some way effective do not internally hold this to be true in their dominant identity. According to the AIM model there exists the phenomena of the Identity Shift Hypothesis. In this hypothesis individuals can re-assign meanings of events to either protect, or outwardly validate their actions and true sense of self. If this is true we must examine other motivations for political action. |

**Comment:** Ok this is all good but make the connection between this set of arguments with your main argument. Again, I see the connection but your essay would be much better if you were making it explicit.

The most significant variable in the model presented by Gibson was the expectation to participate by individual's peers. This paper will also postulate that this is the most important factor in deciding whether or not an individual will act. This appears to be true for a number of inter-related factors. First, acting in such a group as a protest may lend a sense of membership, or standing to a group that is deemed important to the individual<sup>14</sup>. Second, political activism, and identity within groups that are politically active lowers the cost of participation, the most important factor in describing why people did not protest in Gibson's article. Further acting in accord with a political social group may further both an individual's sense of personal identity, and material identity. I propose that an activist's personal identity is advanced because they internally view their social group as moral, and in being a member of such a group they can see themselves as more moral beings. Personal identity is advanced when one partakes in actions they believe they "ought"<sup>15</sup> to, some may believe they "ought" to be part of a politically moral group. It may also be in an individual's material interest to place importance on being a member of a social group in order to gain contacts within the business world, and

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<sup>14</sup> This was paraphrased from Skitka pg. 288

<sup>15</sup> Skitka

possibly gain economically at a later date. Recognition of possible financial impacts of social identification may raise the level of perceived benefits to the demonstrator.

It is difficult to draw a causal argument from the fact that peer expectation had the most profound impact on levels of demonstration, one may be tempted to ask, did the individuals participate because it was socially expected of them, or was it expected of them because they participate? In reference to the claims that acting within a social political group may further personal identity and economic wealth, this cannot be considered to be more than a theory at this juncture as no data is readily available to discern its validity.

**Comment:** Good criticism of Gibson's analysis

**Comment:** Its validity I suppose  
Again, draw conclusions.

A dominant personal identity also serves as a possible source of mobilization for the masses to enforce the rule of law. Individuals driven by personal identity concerns are most concerned with the idea of fairness. Skitka argues that individuals with this type of identity are most concerned with normative ideals, and fairness. This is because internal attribution occurs when they are achieved through a process that is deemed procedurally equal to all involved members.

Individuals with this level of identity may not always be prone to upholding the rule of law. Since these individuals are defined by a high level of normative reasoning on their ideas of justice, and are primarily concerned with fairness, they would most likely not support the rule of law to satisfy these aspects of their identity if the law was not in accordance with their beliefs.

Thus far in the paper we have discussed both justice, and identity characteristics that may or may not be, depending on the case, reasons for the mass support of the rule of law. In this next section of the paper I shall use the historical context of the Glorious

revolution to examine why, and how the mass population initially institutes the rule of law. My primary assumptions for this section of the paper will be. First, the rule of law is in the best self-interest of the general population over the long-term<sup>16</sup>. Second, a majority must be reached within the mass population for them to institute the rule of law. Third, the rule of law must be instituted by the mass population and not the elites for it to be self-enforcing<sup>17</sup>.

**Comment:** It is not clear why you need a normative assumption.

For the rule of law to gain acceptance two problems within the general population must be alleviated, first, different groups must learn to tolerate each other, second, these groups must be able negotiate a pareto criterion result for all parties. Tolerance for different groups in the society must precede negotiations on the coordination problem because by having a working relationship that does not exceed “The Enemy of my enemy is my friend”, will in all likelihood not lead to a sufficient amount of benevolence and neutrality within the negotiations.

For the rule of law to exist, and extend its protection universally in society, a coalition of the majority of the population must be formed, and not just a coalition of the holders of the majority of power. In situations where a majority of power is held between a population minority, it is likely that a stable system of democratic tyranny will prevail. Such was the relationship between the King of England and the Tories in the early to mid 1680’s. The King, and the Tories effectively violated the rights of the Whigs, and had the King not then violated the rights of the Tories this system was seen as potentially stable. Then in a miss-fated pursuit of greater power the King instituted a

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<sup>16</sup> I will not discuss this assumption as I believe it to be self-evident.

<sup>17</sup> I assume this because obedience to the rule of law institutes a relatively greater burden on the elites then it does on the general population.

similar policy against the Tories. After the Kings violation of the Tories, a pact was formed between the Tories and Whigs, creating a majority of the populace (politically active populace), and power. I believe the Whigs, and Tories were able to institute a successful pact for a number of reasons. They were able to quickly and effectively resolve their tolerance issues with one another. They were able to resolve their tolerance issues quickly for a number of reasons, most importantly. The two parties, as rational actors were able to adjust their normative bias on the opposite group as a result of a changing political climate<sup>18</sup>. In building a coalition both parties were able to recognize that the King would not, and could not impose restrictive limits on his own authority as in his previous dealings with such issues he had violated the rights of both parties. They were also able to realize that in order to be able to effectively govern the Kingdom both parties and the mass populace had to act in concert with one another in order to deprive the Kingdoms power mandate.

While the above illustrations serve well to show how the transfer to a rule of law system may operate under ideal conditions, that instance is labeled the Glorious Revolution, and not the everyday run of the mill coup. The vast majority of coup's and revolutions regardless of support by the mass populace or elite's result in failed democracy at best, and dictatorships at worst. This fact may imply that there could exist a number of other factors not yet uncovered which may have significant implications to what is required to introduce the rule of law into government.

**Comment:** This is vague – I think I know what you are saying but you need to work on being explicit and specific.

In Conclusion my approach to the analysis of a mass-centric support for the rule of law is bounded in both rational choice, and bounded rationality theories. As in my

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<sup>18</sup> This is paraphrased from pages 16-17 of *With Malice Towards Some*

paper I have shown that coordinated public support for the rule of law at the individual non-administrative level is contrary to traditional rational choice theories, the true reason for the support these coordinated demonstrations may lie in the AIM, in particular the social identity model. I have also shown that support for the rule of law at the level of the Tories or Whigs does in fact coincide with theories of rational choice, but there exists no natural tendency to support the rule of law in order to get the desired benefits when other more beneficial avenues exist. Support for the rule of law at this level requires that it be self-enforcing by clearly defined benefits.

**Comment:** This is just such a good essay. 95. I feel like a cheapskate giving you a 95, but you could really work on drawing conclusions from your analysis, so there really is some improvement required for a perfect grade.