NO, YOUR HONOUR! DO JUDICIAL REASONING STYLES INFLUENCE THE DEGREE OF ACCEPTANCE OF COURT RULINGS BY THE GENERAL PUBLIC?

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Abstract
[404] *In deciding private law disputes, courts give reasons. Yet, their styles of reasoning differ: they apply different styles of narration, persuasion and argumentation. Some courts may shape their reasoning by applying a formalistic style, referring to code articles and precedents and applying logical deduction rhetoric. Others may apply a more venerable, sacral style, referring to grand principles of law and ethical considerations that are presented as inescapably leading to one right solution. Undoubtedly, such differences are steeped in legal culture and history. They may, however, fall short of convincing the general public. For this public court reasoning styles may read and sound redundantly archaic, cold, fuzzy, impenetrable or worse. As a result, in recent years legal systems have witnessed a call for a more free-spoken, deliberative style of judicial reasoning. Some suggest that such a style would offer a clearer and more palpable alternative to the unnecessarily formalistic or venerable styles. Indeed, some even argue that a deliberative style would enhance the level of approval of court decisions by the lay public. This article reviews the evidentiary basis of such claims. What evidence is there on the relationship between judicial reasoning styles and acceptance of court decisions by the general public? To answer this question, we presented a sample of the general public in the Netherlands with one of three legal cases describing a court verdict and its reasoning. We gauged the influence of reasoning style on the degree of acceptance by using one of* **[405]** *three styles, i.e., formalistic reasoning, venerable or sacral reasoning, and deliberative reasoning. Overall, the results show that reasoning styles do not influence the degree of acceptance by the public. Rather, the key predictor of accepting court decisions appears to be the moral support one has for the outcome of the case. This humbling outcome puts the push among legal scholars for less opaque and more transparent reasoning styles into perspective.*

Keywords: judicial reasoning styles; public acceptance; experiment

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I. INTRODUCTION

A. THE RELEVANCE OF REASONING

In private law litigation, courts are regularly confronted with proceedings in which socially sensitive (legal) questions arise. Examples from tort law abound. Consider, for instance, cases where 'life and death' issues are at stake such as wrongful life or wrongful birth, or responsibility for climate change. Such cases, in which colliding interests are at stake, typically receive significant public scrutiny while the law is often unsettled. Such cases inevitably touch upon the legitimacy of civil courts to shape the law, by weighing the rights, interests, risks and desirable outcomes **[406]** for both litigants and society at large.[1] Civil courts are both burdened with this responsibility and authorised with powers to meet these responsibilities. The exercise of these powers and generally the performance of courts in view of their responsibilities is the subject of public scrutiny. This scrutiny is part of the circular process of building, correcting and fermenting trust levels in key institutions of society.[2] Since a basic level of trust in the judiciary is paramount for popular support and proper functioning of the rule of law, it stands to reason that one of the items of public scrutiny is the examination of the *reasoning*

[1] On the role of legitimacy and perceived legitimacy of courts generally, see, e.g., L. Roussey & B. Deffains, Trust in Judicial Institutions: An Empirical Approach, 8(3), Journal of Institutional Economics, pp. 351–369 (2012); M. Zuleta Ferrari, Trust in Legal Institutions: An Empirical Approach from a Social Capital Perspective, 6(5), Oñati Socio-Legal Series, pp. 1141–1170 (2016), and more specifically, E. Voeten, Public opinion and the legitimacy of international courts, 14(2), Theoretical Inquiries in Law, pp. 411–436 (2013); R. Trinkner & T.R. Tyler, Legal socialization: coercion versus consent in an era of mistrust, 12(1), Annual Review of Law and Social Science, pp. 417–439 (2016); A. Bottoms & J. Tankebe, Beyond procedural justice: A dialogic approach to legitimacy in criminal justice, 102(1), Journal of Criminal Law and Criminology, pp. 119–170 (2012).

[2] On the role of trust in institutions, cf fn 3. See also M.C. Suchman, Managing legitimacy: strategic and institutional approaches, 20(3) Academy of Management Review, pp. 571–610 (1995); J. Jackson, M. Hough, B. Bradford & J. Kuha, Empirical legitimacy as two connected psychological states, in: G. Meško & J. Tankebe (eds), Trust and Legitimacy in Criminal Justice: European Perspectives, pp. 137–160 (Cham: Springer, 2015).

applied by the court. Moreover, it makes sense to assume – as some scholars do – that institutional trust in the judiciary is nourished and bolstered by palatable outcomes underpinned by persuasive arguments and that in turn this persuasion hinges on transparent, traceable and relevant styles of argumentation. If we transpose this assumption from the metalevel of institutional trust to a more concrete level where individuals assess individual court cases, this would mean that we assume that the reasoning style applied by a court in a certain verdict may affect the level of acceptance of court decisions by the general public, holding all other variables such as the outcome of the verdict constant.

B. DIFFERENT STYLES OF REASONING

In rendering verdict in private law disputes, courts apply different styles of narration, persuasion, and argumentation in their reasoning. Leaving legal culture and historical choices and customs aside,[3] a court could, theoretically speaking, arrive at identical **[407]** conclusions using different styles of reasoning. Speaking in the abstract, three models of judicial reasoning can be distinguished: *formalistic reasoning*, *venerable or sacral reasoning*, and *deliberative reasoning*.

When applying a *formalistic* style, a court may refer to the articles of a code and to legal precedent, and apply deductive reasoning rhetoric and logical syllogism, as well as referring to the structure of the legal system as such to construe the basis for its decision. Take for instance a Dutch case where a foreign refugee was denied compensation for loss of income caused by the wrongful denial of a residence permit.[4] The wrongfulness of the residency permit denial was not the main issue, since the authorities had negligently delayed the admission process and thus violated certain international treaty-based rules that should have been followed. In the Dutch context, reference to the legal principle underlying article 6:163 Civil Code was the pivot for dismissal of the claim for compensation of loss of income: no claim can be based on violation of a statute or treaty which does not aim to protect against the damage of the kind suffered by the injured party. The court was unable to find evidence that individual pecuniary interests of refugees were contemplated by the legislature as protected interests. Accordingly, the claim was dismissed. Some have criticised the court's reasoning as overly technical and obfuscating, as it mostly refers to code articles without any reference to the real underlying policy considerations, such as the fear of opening floodgates to all kinds of refugee claims and the redistributive effects of such liabilities. Others, however, have argued that formalistic reasoning of this kind is exactly what the law needs in order to establish and enhance its legitimacy in the eyes of the public.[5]

Alternatively, courts may apply what could be called a more *venerable* or *sacral* reasoning style, whereby the court refers to grand principles of law, ethical considerations and deeply felt moral convictions of the court, which are presented as inescapably leading to a single right solution for society.[6] Obviously, some of these values are explicitly laid down in law, for example in constitutional documents or human rights treaties. Characteristic of this style is that the considerations used, **[408]** in the eyes of the court, enjoy authority precisely because they are of a fundamentally moral nature, and are thus rated higher than formalistic considerations based on

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[3] On the historical and cultural roots of reasoning styles, e.g., U. Babusiaux, Nicht nur eine Frage des Stils – Zur neuen Begründungspraxis der französischen Cour de Cassation, 76(13), JuristenZeitung, pp. 637–646 (2021); R.K. Weber, Der Begründungsstil von Conseil constitutionnel und Bundesverfassungsgericht, pp. 149 ff, (Tübingen: Mohr Siebeck, 2019); Lord Rodger of Earlsferry, The form and language of judicial opinions, 118, Law Quarterly Review, pp. 1226–1247 (2002).

[4] See Hoge Raad der Nederlanden (Dutch Supreme Court), 13.04.2007, ECLI:NL:HR:2007:AZ8751, NJ 2008/576.

[5] See, e.g., *pro* Y. Buruma, Zuinig motiveren, maar wel uitleggen, 64(2), Ars Aequi, pp. 150–158 (2015), and *contra* J.B.M. Vranken, Mr. C. Assers Handleiding tot de beoefening van het Nederlands Burgerlijk Recht – Algemeen deel 2, no. 116 ff (Zwolle: W.E.J. Tjeenk Willink, 1995).

[6] See N.T. Feather & R.J. Boeckmann, Perceived Legitimacy of Judicial Authorities in Relation to Degree of Value Discrepancy with Public Citizens, 26(2), Social Justice Research, pp. 193–217 (2013); L.J. Skitka, Do the Means Always Justify the Ends, or Do the Ends Sometimes Justify the Means? A Value Protection Model of Justice Reasoning, 28(5), Personality and Social Psychology Bulletin, pp. 588-597 (2002); L.J. Skitka & E. Mullen, Moral Convictions Often Override Concerns About Procedural Fairness: A Reply to Napier and Tyler, 21(4), Social Justice Research, pp. 529–546 (2008); L.J. Skitka & E. Mullen, Understanding Judgments of Fairness in a Real-World Political Context: A Test of the Value Protection Model of Justice Reasoning, 28(10), Personality and Social Psychology Bulletin, pp. 1419–1429 (2002).

sources of legal authority. For example, in the case of denial of compensation of the refugee, a venerable reasoning style may entail that the court considers that refugees benefit from the safety offered by the operation of state institutions, that the hospitality displayed by the state shall not be overstretched by demanding monetary compensation for slow decision making, and that overriding fundamental societal values prevail over the interests of a foreign guest.

Undoubtedly, differences in styles of reasoning across jurisdictions are steeped in legal culture and history. They may, however, fall short of convincing the general public, for whom court reasoning styles may read and sound redundantly archaic, cold, fuzzy, impenetrable or worse. As a result, in recent years some legal systems have witnessed a call for a more free-spoken, *deliberative* style of judicial reasoning. It is sometimes said that such a style would offer a clearer and more palpable alternative to the unnecessarily formalistic or venerable styles. Indeed, some even argue that such a deliberative style could enhance the level of approval of court decisions by the lay public.[7] A deliberative style of reasoning includes an overt weighing of arguments for and against a certain outcome, using consequentialist arguments. In this style, the court's decision is explicitly based wholly or in part on the potential consequences of a judgment for the litigants, third parties and society, as well as for the operation of the law itself.[8] The court thus concerns itself with to the manageability of the law, access to justice, the insurability of certain damages, the economic effects of risk allocation mechanisms in law such as liability and the possible behavioural effects thereof. The explicitness of this deliberative weighing of such arguments pro and con adds to the transparent nature of the reasoning style. In the case of the dismissal of the refugee's claim, a deliberative reasoning would overtly refer to the flow of refugees; the potential disruptive effects of a precedent on an indeterminate class of future claims; the undue strain on the public purse; and in particular the affordability of the refugee admissions system and other consequences. We note that the mere rhetorical use of consequentialist arguments in itself does not render them plausible, or evidence based. However, we are not **[409]** concerned here with the factual correctness of the reasoning style but rather the influence it may have, when used, on the level of acceptance of the court decision among the general public.

C. IS REASONING STYLE RELEVANT FOR ACCEPTANCE?

And so the research question that interests us is this: is there any empirical evidence of a relationship between the reasoning style employed by courts and acceptance of court decisions by the public? For instance, is there any evidence that deliberative reasoning is preferred over formalistic reasoning in view of the legitimacy of the judiciary, as is argued by some? In what follows, we deal with this relationship between reasoning style and public acceptance, and we report our attempt at empirically testing its existence. We will proceed as follows. After sketching the theory on reasoning and public acceptance (Section II), we report the findings of an empirical study among Dutch respondents (see Section III) and add possible avenues for further research on this topic and our plans in this regard (Section IV). First, however, some further remarks on the scope of our enquiry are in order.

Our research is to be distinguished from the broader strand of access to justice and procedural justice literature. Admittedly, there is an abundance of related literature on the acceptance of the administration of justice from a procedural justice perspective and the personal experiences of litigants.[9] According to this strand of literature, people are more likely to accept

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[7] Cf. I. Giesen, Rechtsvorming in het privaatrecht, no. 43 (Deventer: Kluwer, 2020).

[8] On this type of reasoning, eg, J.B.M. Vranken, Mr. C. Assers Handleiding tot de beoefening van het Nederlands Burgerlijk Recht – Algemeen deel 2, no. 116 ff (Zwolle: W.E.J. Tjeenk Willink, 1995); I. Giesen, Rechtsvorming in het privaatrecht, no. 43 and 47 (Deventer: Kluwer, 2020); W. van Gerven & S. Lierman, Algemeen Deel. Veertig jaar later, p. 236 (Mechelen: Kluwer, 2010). Sometimes, it is observed that in those jurisdictions where court judges deliver individual speeches and opinions (*seriatim*) instead of one *in camera* agreed decision and reasoning (*per curiam*), the reasoning tends to be more deliberative. See, eg, G. Lübbe-Wolff, Form, Stil und Substanz gerichtlicher Urteile – am Beispiel der Verfassungsgerichtbarkeit, in: E. Schürmann & L. von Plato (eds), Rechtsästhetik in rechtsphilosophischer Absicht - Untersuchungen zu Formen und Wahrnehmungen des Rechts, pp. 17-40 (Baden-Baden: Nomos, 2020). Cf. B. Markesinis, Judicial Style and Judicial Reasoning in England and Germany, 59(2), Cambridge Law Journal, pp. 294–309 (2000).

[9] For a recent review, see H.A.M. Grootelaar, Interacting with Procedural Justice in Courts (PhD Utrecht University, 2018).

judgments when these have come about through a procedure which is perceived as fair, even when these judgments are unfavourable for them in terms of content.[10] However, this school of thought focuses on mechanisms other than the reasoning styles that can contribute to the perceived procedural justice, such as court behaviour and the related treatment of the parties by the court.[11] Moreover, it is mostly concerned with acceptance by litigants. In this article, we are not concerned with the a priori expectations and ex post levels of acceptance of participants to proceedings but with the levels of acceptance by **[410]** the general public given the reasoning style applied by courts in specific verdicts. Related to this, and given that ambit of our contribution, we will not engage with the literature on procedural justice and value alignment since it deals with the perceived legitimacy of legal authorities as institutions and legitimacy concerns as such.[12] Another related, but separate strand of literature that merits mentioning here concerns research into the *quality* of the reasoning and not so much the *style* of reasoning used by (criminal) courts and the possible effects thereof on acceptance of their verdicts. For instance, there is research on whether improvements of the quality of reasoning of verdicts holding a criminal punishment enhance the understanding and endorsement of the verdict among the general public.[13]

Finally, it should be noted that we are not concerned with the *outcome* (i.e., the court's decision, *dictum* or verdict) but merely with the style of reasoning underpinning that outcome. Furthermore, we do not focus on variation in reading ease, sentence structure or the use of technical or outdated terms. Various courts have indeed recently prioritised enhancing the accessibility and reading ease of their decisions.[14] We gladly acknowledge that the use of easily accessible language is an important element in any form of reasoning but language and readability as such are outside the scope of our contribution.[15]

II. LINKING REASONING STYLES AND DETERMINANTS OF ACCEPTANCE

A. JUDICIAL REASONING AND ITS FUNCTIONS

If we assume that there is indeed a connection between reasoning style and the acceptance of court decisions by the general public, the question is what reasoning style is apt to have a positive effect on levels of acceptance. To be able to answer this question, we must first acquire an insight into the different styles of reasoning. As a starting point, it is a well-established principle among advanced legal systems that a court ruling shall be underpinned by an express and unqualified reasoning. **[411]** The principle is encapsulated in Article 6 of the European Convention on Human Rights, which essentially demands that court decisions must contain the reasons upon which they are based.[16] Much has been written on the functions of judicial reasoning and further requirements attached to

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[10] Cf. L. Walker, E.A. Lind & J. Thibaut, The Relation between Procedural and Distributive Justice, 65(8), Virginia Law Review, pp. 1401–1420 (1979); J. Thibaut & L. Walker, Procedural Justice: A Psychological Analysis (Hillsdale, N.J.: Lawrence Erlbaum Associates, 1975); T.R. Tyler, Why People Obey the Law (New Haven: Yale University Press, 1990); T.R. Tyler, Procedural Fairness and Compliance with the Law, 133(2), Swiss Journal of Economics and Statistics, pp. 219–240 (1997); T.R. Tyler & E.A. Lind, Procedural justice, in: J. Sanders & V.L. Hamilton, Handbook of Justice Research in Law, pp. 65–92 (New York: Springer, 2001); T.R. Tyler, Psychological Perspectives on Legitimacy and Legitimation, 57(1), Annual Review of Psychology, pp. 375–400 (2006); H.A.M. Grootelaar, Interacting with Procedural Justice in Courts (PhD Utrecht University, 2018).

[11] An exception is H.A.M. Grootelaar, Interacting with Procedural Justice in Courts, p. 141 (PhD Utrecht University, 2018), who mentions reasoning as an element that needs further research.

[12] See e.g., E. Grosfeld, D. Scheepers and A. Cuyvers, Value Alignment and Public Perceived Legitimacy of the European Union and the Court of Justice, 12(785892), Front. Psychol. (2022).

[13] See H. Elffers, E.M. Ernst, & A. Klijn, Een motief om te motiveren? Het helpt! Betere strafmotivering leidt tot meer begrip en tot meer acceptatie, 100(5), Proces, pp. 309–321 (2021).

[14] See eg, U. Babusiaux, Nicht nur eine Frage des Stils – Zur neuen Begründungspraxis der französischen Cour de Cassation, 76(13), JuristenZeitung, pp. 637–646 (2021); Y. Donzallaz, La technique de rédaction des jugements au regard des finalités de la motivation, 13, Association des Cours Constitutionnelles Francophones (ACCPUF), pp. 73–88 (2019). Cf. H. Colombet & A. Gouttefangeas, La qualité des décisions de justice. Quels critères?, 83, Revue Droit et Societé, pp. 164–165 (2013).

[15] Of course, in our experiment we did verify that the vignettes were comprehensible to respondents. See further Section III.

[16] See eg, ECtHR, 27.09.2001, Hirvisaari v. Finland, appl.no. 49684/99, no. 30; ECtHR 2.10.2014, Hansen v. Norway, appl.no. 15319/09, no. 71–74.

reasoning.[17] For instance, it is broadly accepted that the duty to give reasons is differentiated, depending on the case at hand.[18] The literature also shows that ideas about what is to be regarded as a proper statement of reasons are closely related to beliefs and views of the objectives and addressees of court reasoning. For example, the statement of reasons may be considered to be aimed at the litigants, in particular the losing party, the judiciary, the general public and/or society in general. As for the purpose that can be served by the statement of reasons, one can think of contributing to law making; ensuring effective dispute resolution between the parties; creating (the perception of) procedural justice; providing clarity to legal practice; enabling control in the judicial column; and, finally, bolstering the legitimacy of the judiciary as a democratic institution.[19] Reasoning is one of the instruments available to the judiciary to account to society. Ultimately, it is said to be important for the legitimacy of the judiciary that informed readers of court decisions are persuaded of the righteousness of a judgment.[20] It is therefore generally assumed that sound reasoning of a court decision benefits, among other things, the acceptance of that decision and confidence in the administration of justice in general.[21]

B. PUBLIC ACCEPTANCE AND ITS DETERMINANTS

To summarise the previous paragraph, the focus tends to be on highly relevant issues such as the constitutional and institutional functions of judicial reasoning and the formal requirements of court decisions. Our focus here is a different one: we explore the concept of judicial reasoning in relation to the level of acceptance of court rulings by the general public. *Acceptance* as a concept is closely related to the concept of *legitimacy of power exercise*. There is legitimate exercise of power, according to **[412]** Beetham, if this exercise of power (I) conforms to established rules, (II) the rule can be justified by reference to shared beliefs, and (III) there is evidence of consent by the subordinate to the particular power relation.[22] The last aspect refers to acceptance of the exercise of power, and evidence of it. Acceptance of the exercise of power can take on different manifestations and can relate to different manifestations of the exercise of power. We understand acceptance to be the degree of approval, acquiescence, or disapproval that an actor demonstrates (explicitly or tacitly) with respect to a judicial decision. Starting from this definition, we searched for existing knowledge and insights on the influence of reasoning style on the acceptance of judicial decisions, as well as studies on how these influences can be empirically investigated. A safe starting point in that search is that acceptance is largely determined by influences other than the reasoning style employed.

The literature on determinants of acceptance reveals two interesting strands that we will explore further, namely *moral mandate* and *institutional loyalty*. In psychology, *moral mandate* refers to the similarity or discrepancy between the substantive decision on the one hand and a person's moral or religious convictions regarding that decision on the other. In particular, it seems that if one has strong moral convictions about a particular issue, one is less open to alternative outcomes and arguments. According to Skitka and Mullen:

> *outcomes and procedures will be perceived as legitimate and fair if they are consistent with perceivers' moral mandates and will be perceived as illegitimate and unfair if they are inconsistent with perceivers' moral mandates.*[23]

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[17] See, eg, Y. Donzallaz, La technique de rédaction des jugements au regard des finalités de la motivation, 13, Association des Cours Constitutionnelles Francophones (ACCPUF), pp. 73–88 (2019).

[18] For an overview of the European legal requirement, see D. Harris, M. O'Boyle, C. Buckley (3rd ed), Law of the European Convention on Human Rights, p. 430 (Oxford: OUP, 2014).

[19] See, eg, Y. Donzallaz, La technique de rédaction des jugements au regard des finalités de la motivation, 13, Association des Cours Constitutionnelles Francophones (ACCPUF), pp. 77 ff (2019).

[20] I. Giesen, Beginselen van burgerlijk procesrecht (Asser Procesrecht 1), no. 445 (Deventer: Wolters Kluwer, 2015).

[21] See fn 20.

[22] D. Beetham (2nd ed), The Legitimacy of Power, p. 16 (New York: Palgrave, 2013).

[23] L.J. Skitka, Do the Means Always Justify the Ends, or Do the Ends Sometimes Justify the Means? A Value Protection Model of Justice Reasoning, 28(5), Personality and Social Psychology Bulletin, p. 589 (2002); L.J. Skitka & E. Mullen, Understanding Judgments of Fairness in a Real-World Political Context: A Test of the Value Protection Model of Justice Reasoning, 28(10), Personality and Social Psychology Bulletin, p. 1420 (2002).

Moral mandate thus indicates the extent to which the content of an outcome is morally right in the eyes of the citizen. Particularly in situations where citizens consider the central theme of a judgment morally important, this moral mandate would have a (decisive) influence on the acceptance of that judgment.

The operation of this moral mandate has a number of consequences for the design of our empirical study, which we will elaborate upon hereafter. It entails that, in developing the vignettes we used, we chose cases that address issues that we expected people to consider morally important (up to a certain level). Furthermore, the notion of moral mandate implies that when citizens (dis)agree with the outcome on moral grounds, other influences than that substantive outcome, such as the motivation used, are less important for the acceptance (or lack thereof) of the content. This raises the question whether, in cases where the moral mandate is weak or lacking, the style **[413]** of reasoning employed may have a positive impact on the acceptance of that ruling. In particular, one might be inclined to expect that in such a case a deliberative style of reasoning might contribute more to the acceptance of that decision than a venerable or sacral style of reasoning.[24] After all, a deliberative style of reasoning pays explicit attention to the various arguments, while a sacral style emphasises that morally only one answer is possible. Finally, because of the effect of the moral mandate and in order to be able to determine to what extent acceptance is still influenced by the reasoning style, we chose themes for our vignettes that, according to our estimation, the respondents would also judge differently, morally speaking.

Institutional loyalty can be understood as the basic level of 'loyalty' to, or trust in, a judicial authority.[25] Institutional loyalty indicates the degree to which citizens accept the court system, regardless of their appreciation (or disapproval) of the substantive outcome in a specific case. This basic trust is resilient and is not (immediately) substantially affected by a single unwelcome ruling.[26] The effect of institutional loyalty suggests that the higher the degree of institutional loyalty, the less the style of reasoning used affects the degree of acceptance of a ruling.[27] The question is whether this also works the other way around: does the reasoning style become more important at lower degrees of institutional loyalty? As far as we know, the interplay between the degree to which an institution enjoys institutional loyalty and the style of justification used by that institution in relation to the public's acceptance of the institution's rulings has hardly been studied empirically.

A notable exception is offered by Farganis, who used vignettes and questionnaires to investigate whether the degree of institutional loyalty enjoyed by the Supreme Court of the United States and the degree to which its rulings are accepted are influenced by the type of arguments that the Court puts forward in its reasoning in politically sensitive cases.[28] In Farganis' study, respondents were presented with either technical-legal arguments, moral arguments, or arguments based on opinion polls ('what do the people want'). Among other things, Farganis concludes that the use of technical-legal considerations somewhat increases the perceived legitimacy **[414]** of justice. The perceived legitimacy of the Supreme Court is highest when the Court uses formalistic arguments and lowest when the arguments used were, in Faraganis' words, extraconstitutional. An explanation for this may be that citizens expect the institution, in this case the court, to account for its decisions in a certain way that they consider characteristic and desirable for the institution in question, in this case technical-legal argumentation, and that the institution enjoys institutional loyalty precisely for that reason (i.e., through the use of technical-legal arguments). In other words, the court enjoys loyalty because it decides on the basis of legislation and case law, and thus appeals to 'the authority of the

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[24] In other words, if the moral mandate is lacking – ie, people think "it" is an important issue, but disagree with the outcome on moral grounds – then a discursive motivational style contributes most to the degree of acceptance.

[25] This determinant is somewhat special because the degree of institutional loyalty could also be influenced by the determinants discussed below.

[26] J.L. Gibson, G.A. Caldeira & L.K. Spence, Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment, 58(2), Political Research Quarterly, pp. 187–201 (2005), at p. 188; D. Farganis, Do Reasons Matter? The Impact of Opinion Content on Supreme Court Legitimacy, 65(1), Political Research Quarterly, pp. 206–216 (2012).

[27] In other words: persons with a high amount of institutional loyalty will accept the verdict anyway.

[28] D. Farganis, Do Reasons Matter? The Impact of Opinion Content on Supreme Court Legitimacy, 65(1), Political Research Quarterly, pp. 206–216 (2012). That the research has chosen for politically sensitive cases is justifiable because of the moral mandate, as discussed.

law' and does not decide on the basis of its own morality or legal-political considerations. Another important point that emerges from this study is that the style of justification used can have an influence on the acceptance of a set of related cases. However, the study also shows that the influence that the reasoning style used in a single case has on institutional loyalty should not be overestimated. The study shows that even among those who disagreed with the court's decision and with the motivation for this decision, the majority accepted the judicial decision (by their own admission). One explanation for this is the high degree of institutional loyalty that the Supreme Court generally enjoys.

III. RESULTS OF AN EXPERIMENTAL STUDY

A. SETUP

Building on the existing literature on judicial reasoning styles and on public acceptance of court decisions and its determinants, we conducted an empirical legal study. Since this study was previously reported in more detail in Dutch in a Dutch legal journal,[29] we report it here at some length to disseminate the main findings to an international audience. We add possible avenues for further international research into this topic and our plans in that regard (Section IV).

In our study, we set out to explore the following relationships between determinants and judicial reasoning styles:

- The more people agree with the outcome of the procedure (i.e., the stronger the moral mandate), the style of reasoning used, regardless of what that style is, has less influence on the acceptance of the outcome.
- **[415]** If someone disagrees with the outcome on moral grounds, a deliberative reasoning style contributes the most to the acceptance of that statement compared to the other styles.[30]
- The higher the degree of institutional loyalty, the less the reasoning style used affects the degree of acceptance of a judgment.[31]
- People with a high degree of institutional loyalty accept judgments with a formalistic style more than judgments that use one of the other styles.

We designed three vignettes in such a way as to elicit strong moral beliefs in Dutch respondents. The vignettes used involved obstetricians' liability for wrongful life; strict liability of a motorist who collides with a drunk cyclist; and state liability to refugees after unlawful refusal to grant a residence permit. The first case involved a professional error by a gynaecologist that caused a woman's sterilisation to fail and allowed the woman subsequently to become pregnant. The couple sought reimbursement for the costs of raising the child until the age of 18. The second case involved a 21-year-old man who, zigzagging from intoxication, was cycling along the road at night without lights and was hit by a car. The cyclist sustained personal injuries and wanted to recover these damages from the motorist. The third case concerned a refugee from Syria who was wrongfully refused a residence permit by the State authority due to carelessness on its part. In the proceedings, the refugee claimed compensation from the State for loss of income from work and pension damage, as it was established that she had suffered this damage because she was not able to work since she had been denied recognition as a refugee by the government for five years.

We designed three versions of each of the three vignettes. The outcome of the court decision itself was held constant but the different reasoning styles were manipulated into a formalistic, a venerable or sacral, and a deliberative style. We did not directly ask the respondents to identify the

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[29] E.R. de Jong, N. Strohmaier, W.H. van Boom & I. Giesen, Rechterlijke motiveringsstijlen en maatschappelijke acceptatie van uitspraken, 42(10), Nederlands Tijdschrift voor Burgerlijk Recht, pp. 312–324 (2020).

[30] In other words, if moral mandate is lacking (ie, people feel that issue presented is an important issue but disagree with the outcome on moral grounds), a discursive motivational style contributes most to the degree of acceptance.

[31] In other words: persons with a high amount of institutional loyalty will accept the verdict anyway.

reasoning styles applied in the vignettes, although we sufficiently pretested these to validate the styles.[32] Our respondents were instructed to read the vignettes and to answer a number of questions. These questions measured the levels of the respondents' acceptance, their levels of moral mandate, as well as the levels of their institutional loyalty.[33] We also measured the perceived agreeableness of the writing style as such. The experiment was conducted by means of an online study among both Dutch law students (hereafter referred to as lawyers) and a general public exclusively consisting of non-lawyers. A total **[415]** of 277 lawyers participated in the study (57.4% female, mean age 21.6 years). The general public group (N=570, 58.4% female, mean age 42.1 years) were recruited and remunerated for their participation.[34]

B. FINDINGS IN FULL

1. General Relationships Among the Different Factors

We first explored correlations between the different factors. Table 1 shows that for both lawyers and general public there is a strong correlation between the degree of acceptance and the degree of moral mandate and institutional loyalty. One's perception of the writing style used to write the court's verdict (note that this is *not* the reasoning style) also correlates significantly with acceptance, moral mandate, and institutional loyalty. That is, the more pleasing the style is perceived to be, the greater the moral mandate, as well as the person's institutional loyalty and the acceptance of the verdict. However, these are correlations and not necessarily causal relationships. Thus, the causal direction may also be the opposite. For example, it may also be the case that people judge judgments with which they agree (i.e., those with a high moral mandate) more positively in terms of writing style.

An interesting correlation is that between the cognitive reflection test (CRT)[35] and institutional loyalty. Those who think more analytically (rather than intuitively), both within the group of lawyers and the general public, report higher levels of institutional loyalty, and thus are more loyal to institutions such as the judiciary.

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[32] Data of these pre-tests are available upon request.

[33] The internal consistency of the questions was adequate for levels of acceptance (α =.78 for lawyers; .86 non-lawyers), levels of moral mandate (α =.95 and .98), and institutional loyalty (α = .60 and .81).

[34] We included a standard cognitive reflection test (CRT); for an introduction of CRT, see S. Frederick, Cognitive reflection and decision making, 19(4), Journal of Economic Perspectives, pp. 25–42 (2005); cf. G. Pennycook, J. A. Fugelsang & D. J. Koehler, Everyday Consequences of Analytic Thinking, 24(6), Current Directions in Psychological Science, pp. 425–432 (2015), for an overview of the relationships between CRT and, for example, attitudes toward religion and values, moral judgments, and cooperative behaviour. We found in our sample that on average the lawyers had a more analytical, and thus less intuitive, thinking style than the general public.

[35] See n 34 above.

Table 1. Pearson-correlations between the variables for both lawyers and non-lawyers. ** $p < .01$

Lawyers	Acceptance	Moral Mandate	Inst. Loy.	Writing style	CRT
Acceptance	-	.75**	.30**	.24**	.05
Moral Mandate		-	.17**	.23**	.05
Inst. Loy.			-	.19**	.26**
Writing style				-	.02
CRT					-
Non-lawyers					
Acceptance	-	.87**	.52**	.37**	-.06
Moral Mandate		-	.51**	.42**	-.14**
Inst. Loy.			-	.39**	.17**
Writing style				-	-.04
CRT					-

[417] To examine which of the three variables (moral mandate, institutional loyalty, and writing style, thus not yet incorporating reasoning style) is the strongest predictor of acceptance, regression analyses were conducted in which the three variables were added incrementally to a regression model. This makes it possible to see if each variable can explain a significant portion of the variation in acceptance, or if a variable overlaps with other variables and therefore has no unique predictive value. Table 2, which uses data from the lawyers, shows that in Model 3, which includes all three variables, only moral mandate and institutional loyalty have a predictive value for the degree of acceptance. It can also be seen that moral mandate has an approximately twice as strong relationship with the degree of acceptance as institutional loyalty. Writing style (again, not reasoning style), which still had predictive value in Models 1 and 2, is not a significant predictor in this third model. This means that when one controls for the predictive value of moral mandate and institutional loyalty (as was done in Model 3), the writing style of the judgment no longer has a predictive value for the degree of acceptance of the judgment. It can therefore be concluded that writing style is less important for judgment acceptance than the degree of moral mandate and institutional loyalty.[36] The same results were found for the general public, which are described in Table 3. **[418]**

[36] We suspect that moral mandate is a so-called confounding factor in the relationship between writing style and acceptance. This means that writing style is not meaningfully related to acceptance and, on the contrary, moral mandate is positively related to the evaluation of writing style and acceptance of the statement. This would explain why the predictive value of writing style as found in model 1, disappears as soon as moral mandate is included in model 3. The data do not give us any reason to suspect that a positive evaluation of writing style leads to a higher moral mandate and subsequently to more acceptance (mediation) or to suspect that the relationship between the

Table 2. Regression models for the three predictive factors for the degree of acceptance of judgments (sample: lawyers).

	Model 1			Model 2			Model 3		
	b	*SE*	*p*	b	*SE*	*p*	b	*SE*	*p*
Writing style	0.25	0.06	< .001	0.20	0.06	.001	0.05	.04	.227
Inst. Loy.	-	-	-	0.42	0.09	<.001	0.27	0.06	< .001
Moral Mandate	-	-	-	-	-	-	0.66	0.04	< .001
Constant	2.95	0.30	<.001	0.76	0.56	.176	-0.11	0.39	.773
	R^2 = .240			R^2 = .351			ΔR^2 = .766		
	F(1,275) = 16.79, p < .001			F(1, 274) = 20.46, p < .001			F(1,273) = 305.95, p < .001		

Table 3. Regression models for the three predictive factors for the degree of acceptance of judgments (sample: non-lawyers).

	Model 1			Model 2			Model 3		
	b	*SE*	*p*	b	*SE*	*p*	b	*SE*	*p*
Writing style	0.45	0.05	< .001	0.24	0.05	< .001	-0.02	0.03	.401
Inst. Loy.	-	-	-	0.54	0.05	<. 001	0.14	0.03	< .001
Moral Mandate	-	-	-	-	-	-	0.75	0.02	< .001
Constant	1.74	0.23	<.001	0.20	0.24	.422	0.53	0.14	.401
	R^2 = .135			R^2 = .303			ΔR^2 = .760		
	F(1,568) = 88.61, p < .001			F(1, 567) = 123.10, p < .001			F(1,566) = 598.62, p < .001		

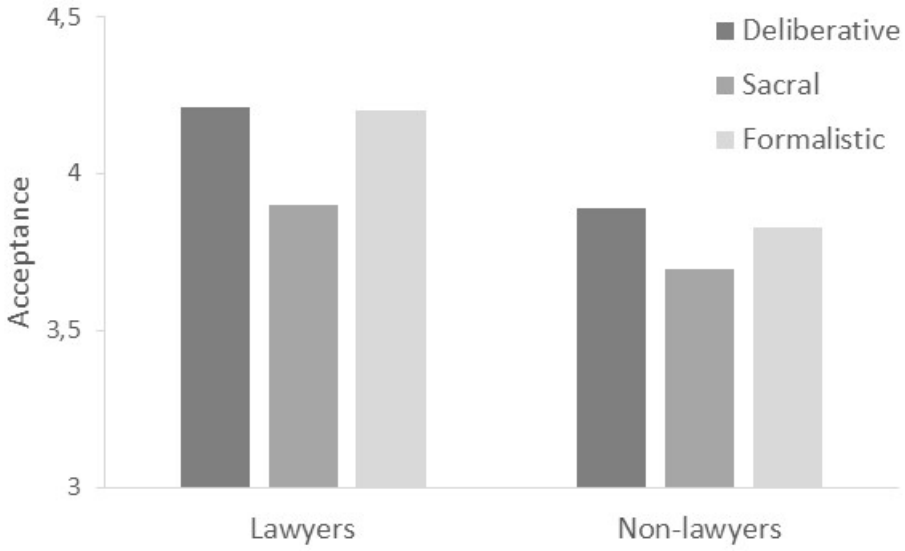
evaluation of writing style and acceptance of the judgment depends on the degree of moral mandate (moderation). Therefore, no additional analyses were conducted regarding writing style.

For now, it seems that the acceptance of a judgment is primarily predicted by the degree to which a person agrees with the outcome of the judgment on moral grounds. In other words, the person simply agrees with the judgment. In addition, a person's institutional loyalty also seems to contribute positively to the acceptance of a court verdict.

2. Reasoning Style and Acceptance Levels

Importantly, the above has not yet taken into account the reasoning style used by the court. Does style influence the degree of acceptance of a judgment and is this perhaps particularly (or exclusively) the case with a certain degree of moral mandate or institutional loyalty? To investigate this, first, the degree of acceptance was compared for the three styles.[37] The results are visualised in Figure 1. Even though the venerable **[419]** or sacral reasoning style seems to trigger less acceptance, this difference is not statistically significant for either lawyers or the general public.[38] However, lawyers overall do seem to accept judgments more than the general public does, independent of the reasoning style.

Figure 1. Average degree of acceptance for the three reasoning styles, for both lawyers and non-lawyers.



The response scale ranged from 1 (very low acceptance) to 7 (very high acceptance). Thus, a value below 4 means that the repondent tends to not accept the verdict and a value above 4 means that the respondent tends to accept the verdict.

3. Acceptance and Levels of Moral Mandate and Institutional Loyalty

Next, we examined whether reasoning style might have an effect on acceptance when moral mandate or institutional loyalty is low or high. The results showed that the effect of style on acceptance appears to be independent of moral mandate.[39] In other words, both in cases of high and

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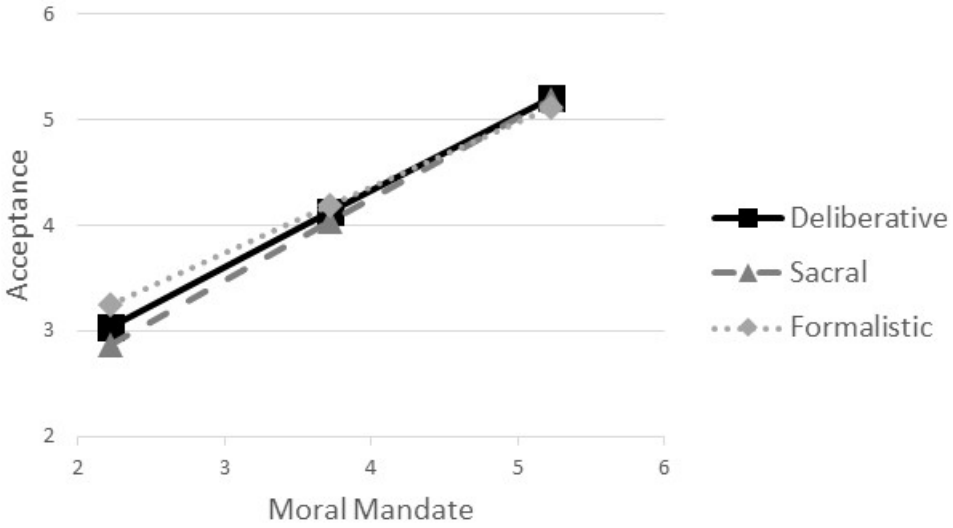
[37] For these specific statistical tests (ie, the effect of motivational style on the various outcome variables), we determined, using G*Power software, that for the lawyer sample, we had a "power" of 0.95 to detect an effect size of f = 0.24 (average). For the non-lawyer sample, we had a power of 0.95 to detect an effect size of f = 0.17 (medium to small).

[38] Effect of style on degree of acceptance, $F(2,268) = 1.52$, $p = .221$, $\eta p2 = .011$. Also, there was no interaction with the "case" factor, meaning that any effect of style did not depend on the specific case presented, $F(4,268) = 1.22$, $p < .304$, $\eta p2 = .018$. Also for non-lawyers, there was no effect of style on acceptance, $F(2,561) = 1.44$, $p = .237$, $\eta p2 = .005$, and again no interaction with case, $F(4,561) = 1.39$, $p = .237$, $\eta p2 = .010$.

[39] This research question was examined through Hayes' PROCESS. See e.g., A.F. Hayes, Introduction to Mediation, Moderation and Conditional Process Analysis: A Regression-based Approach (New York: The Guilford Press, 2013). A regression model (10,000 bootstraps) with style as predictor, moral mandate as moderator, and acceptance as dependent variable showed that the interaction between style and moral mandate was not significant for lawyers, $F(2,271) = 1.46$, $p = .234$, nor for non-lawyers, $F(2,564) = 1.48$, $p = .229$.

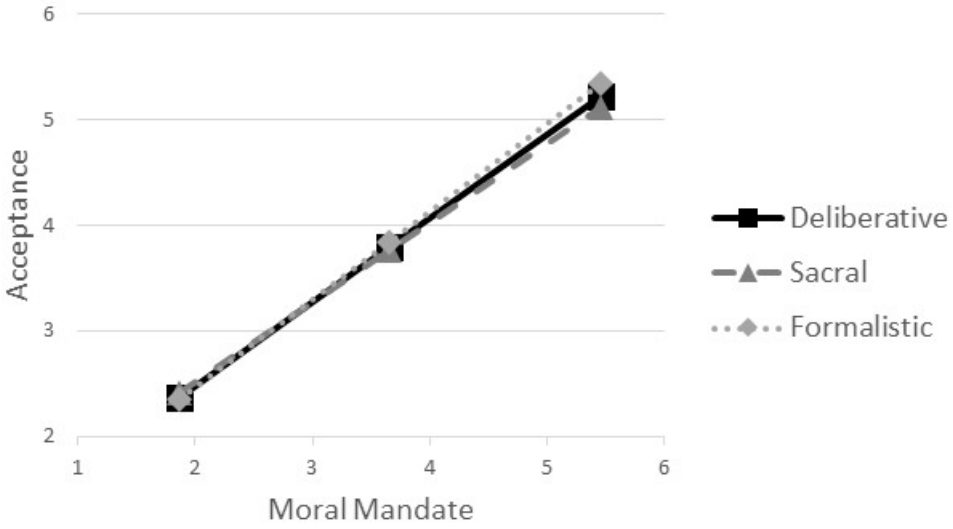
of low moral mandate, the reasoning style has no effect on the degree of acceptance. This can be seen visually for the lawyers in **[420]** Figure 2 and for the general public in Figure 3. It can be seen that for all levels of moral mandate (the x-axis), there is no difference for the different styles (the three lines) in terms of judgment acceptance (the y-axis).

Figure 2. The average acceptance of the verdict among lawyers for the three styles at different levels of moral mandate.



The left measurement is at one standard deviation below the mean moral mandate, the middle measurement is the mean moral mandate, and the right measurement is one standard deviation above the mean moral mandate. The total moral mandate scale ranged from 1 (very low moral mandate) to 7 (very high moral mandate).

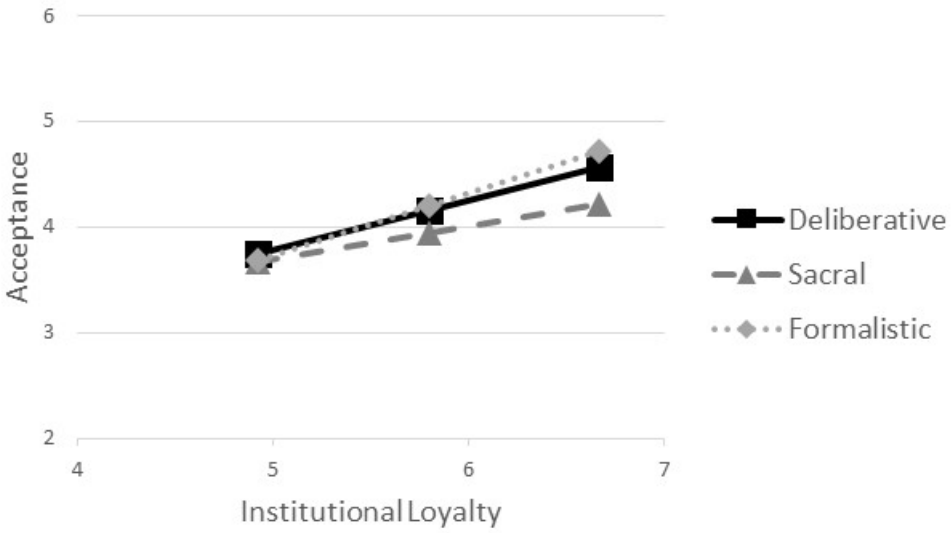
Figure 3. The average acceptance of the verdict among non-lawyers for the three styles at different levels of moral mandate.



The left measurement is at one standard deviation below the mean moral mandate, the middle measurement is the mean moral mandate, and the right measurement is one standard deviation above the mean moral mandate. The total moral mandate scale ranged from 1 (very low moral mandate) to 7 (very high moral mandate).

[421] We also examined whether the effect of style on acceptance might depend on the degree of institutional loyalty. For lawyers, this did not appear to be the case, as can be seen in Figure 4. Despite the fact that it might seem that with a high degree of institutional loyalty, the sacred style leads to the lowest acceptance, this difference is not statistically significant.[40] It can be seen that for all levels of institutional loyalty (the x-axis), there was no difference for the different styles (the three lines) in terms of acceptance of the verdict (the y-axis).

Figure 4. The average acceptance of the verdict among lawyers for the three styles at different levels of institutional loyalty.



The left measurement is at one standard deviation below the average institutional loyalty, the middle measurement is the average institutional loyalty, and the right measurement is one standard deviation above the average institutional loyalty. The overall scale for institutional loyalty ranged from 1 (very low institutional loyalty) to 7 (very high institutional loyalty).

For the general public (ie, non-lawyers), however, there was a relationship between reasoning style and institutional loyalty.[41] As shown in Figure 5, a formalistic reasoning style caused a slight increase in acceptance for those who scored high on institutional loyalty.[42] For those who score relatively low on institutional loyalty (left **[422]** on the x-axis), no difference can be seen for the different styles (the three lines) in terms of judgment acceptance (the y-axis). For those who score relatively high on institutional loyalty (right on the x-axis), a difference is seen for the different styles (the three lines) in terms of the acceptance of the verdict (the y-axis), namely a slight preference for the formalistic style. However, these findings border on traditional values for statistical significance and should therefore be interpreted with some caution.

Figure 5: The average acceptance of the verdict among the general public for the three styles on different levels of institutional loyalty.

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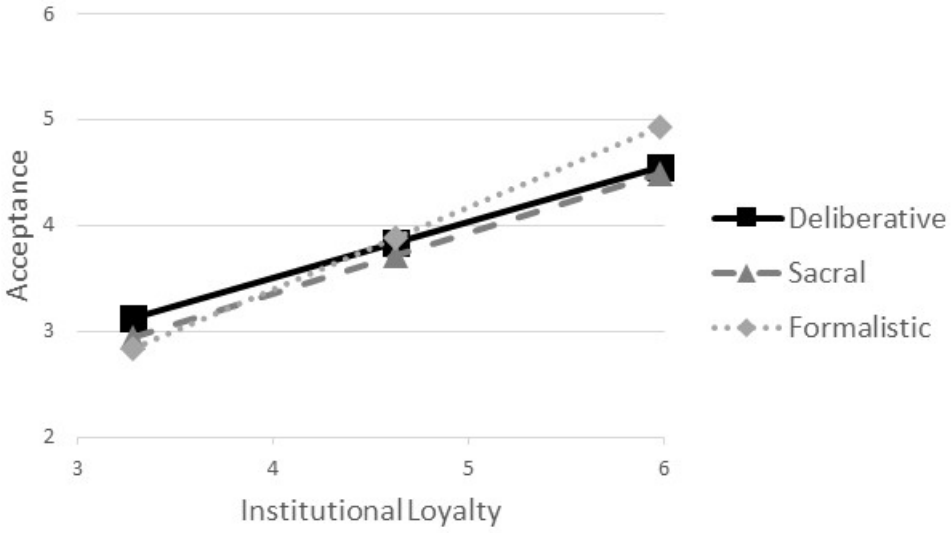
[40] Again, Hayes' PROCESS was used. A regression model (10,000 bootstraps) with style as predictor, institutional loyalty as moderator, and acceptance as dependent variable showed that the interaction between style and institutional loyalty was not significant for lawyers, $F(2,271) = 1.46$, $p = .234$.

[41] A regression model (10,000 bootstraps) with style as predictor, institutional loyalty as moderator, and acceptance as dependent variable showed that the interaction between style and institutional loyalty was nearly significant for non-lawyers, $F(2,564) = 2.95$, $p = .053$.

[42] For the group scoring one standard deviation above the mean on institutional loyalty, there was a nearly significant effect for the dummy variable coded such that deliberative and venerable were both assigned "0" and formalistic "1". The regression coefficient of this dummy variable here was: $B = 0.37$, $se = 0.21$, $p = .070$, 95% CI[-0.03, 0.78].



The left measurement is at one standard deviation below average institutional loyalty, the middle measurement is average institutional loyalty, and the right measurement is one standard deviation above average institutional loyalty.[43]

C. FINDINGS IN SUM

Considered as a whole, the results of our study paint a picture showing that the style with which a court underpins its ruling has little predictive value for the degree to **[422]** which third parties accept this ruling. Hence, the most important factor for social acceptance of justice simply seems to be whether people agree with the judgment (i.e., the moral mandate). In addition, institutional loyalty also has a predictive value for the degree of acceptance of a judgment, albeit to a lesser extent than moral mandate. Finally, the characteristics of individuals also seem to play a role in the degree of acceptance. For example, the lawyers in this study showed a higher degree of acceptance overall than the general public, although it cannot be determined with certainty that this is related to studying law.

D. LIMITATIONS

As any empirical study, our research certainly has its limitations. For example, we did not conduct any real-life experiments, involving real people involved in their own real cases. Instead, we used 'life like' cases and a large number of respondents voicing their opinion over a case that is not 'theirs'. However, the design we used did allow us to get as close as possible to a real-life experience as we could, given the obvious impediment that we could not experiment with real cases involving real people.

Second, we only designed our experimental survey for three vignettes, using and testing only three styles. We thus employed a limited number of cases and reasoning styles. Given the vast number of respondents we would need for a larger set-up, using more cases and styles, we were constrained by the limits of feasibility. Furthermore, the styles we used were presented to our respondents in isolation, while in real life court reasoning they might in fact be used simultaneously in compounded variants. We do however note that the design we did test, does allow us to draw

[43] For neither lawyers nor the general public, the relationship between reasoning style and the degree of acceptance depended on the score on the CRT and thus on the thinking style. In other words, both the more analytical and the more intuitive thinkers show the same pattern when it comes to the effect of reasoning style on acceptance. A regression model (10,000 bootstraps) with style as predictor, CRT as moderator, and acceptance as dependent variable showed that the interaction between style CRT was not significant for lawyers, $F(2,271) = 0.45$, $p = .640$, nor for non-lawyers, $F(2,564) = 0.67$, $p = .512$.

methodologically valid conclusions. We did test whether the results were in any way dependent on the specifics of the presented case, but we found no significant interaction between the variables and the cases used, which gives us some confidence that the results are generalisable to different cases as well.

Third, we tested our vignettes in one jurisdiction only, the Netherlands. Needless to say, this is a jurisdiction, as any, with its own legal culture, its own levels of general trust in the judiciary, and its own way of dealing with acceptance of judgments. Therefore, we should be careful not to overstate the external validity of our conclusions for other jurisdictions with their distinct legal culture. On the other hand, it stands to reason that members of the general public will not vary so greatly between similar western countries.

Finally, what remains an open question is whether reasoning style might have a relevant effect on acceptance in cases that are less morally laden. In the cases used in our experiments, relatively strong emotional and moral reactions were expected given the sensitive nature of their content (e.g., wrongful life, personal injury, immigration). It could be that moral mandate trumps the potential influence of **[424]** reasoning style in such cases. It would therefore be worthwhile to further investigate the potential effect of reasoning style in somewhat more mundane cases.

IV. DISCUSSION AND POSSIBLE DIRECTIONS FOR FUTURE RESEARCH

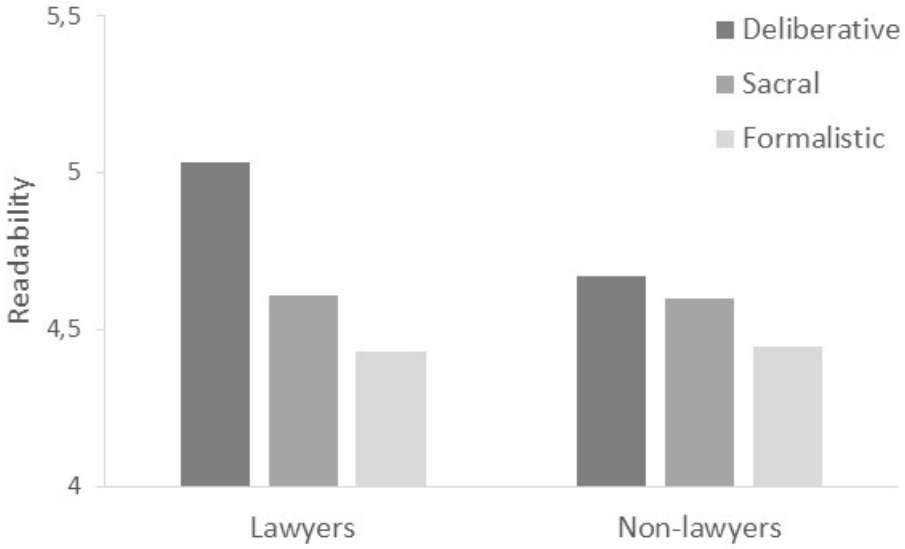
As said, the results we found tell us that the reasoning style a court uses to underpin a judgment has little predictive value for the degree to which third parties accept a ruling. The most important factor for social acceptance of justice seems to be whether people agree with the judgment (i.e., the moral mandate). Institutional loyalty also has a predictive value for the degree of acceptance of a judgment, albeit to a lesser extent than moral mandate. Finally, the characteristics of individuals also seem to play a role in the degree of acceptance. For example, the lawyers in this study showed a higher degree of acceptance overall than the general public, although it cannot be determined with certainty that this is related to the fact that they studied law.

One may wonder whether the findings from our study are disappointing or reassuring. On the one hand, we had originally expected to find confirmation of the proposition put forward by some legal scholars that in view of social acceptance of court verdicts, deliberative reasoning is superior to other styles.[44] On the other hand, we are confident that the fact that the hypotheses we formulated on the basis of these propositions were not confirmed by our study, adds to the body of legal empirical knowledge. Our findings may add to an informed debate on the importance of judicial reasoning and the target audience of palatable reasoning styles. If 'ear candy' reasoning styles have little impact on general public acceptance, the question remains what other good reasons there are for striving for a certain style of reasoning in court decisions. After all, our results do provide some insights into what effects one may or may not expect from differences in reasoning styles.
Hence, we conclude that one should not overstate the societal need for deliberative reasoning. The idea that, particularly in socially sensitive legal cases, a deliberative substantiation can benefit the acceptance by the general public of the verdict rendered is not confirmed by our research. So, those legal scholars in civil procedure who advocate the overhaul of judicial reasoning styles, are invited to reconsider their arguments. In short: from the point of view of acceptability of the administration of justice by third parties, deliberative reasoning is not indispensable. This does not mean that courts should remain deaf to calls to bridge the gap between the judiciary and the general public. Yet, to effectively connect with society and to bolster the levels of social acceptance of the administration of justice, mechanisms other than a written reasoning in a certain style seem to be more appropriate. Alternatively, there **[425]** may be other perfectly legitimate reasons such as normative

[44] I. Giesen, Rechtsvorming in het Privaatrecht, no. 47 (Deventer: Kluwer, 2020).

considerations[45] to strive for a more deliberative reasoning style in court decisions which are separate from the empirical evidence our study has provided. For example, there may be good reasons for using a deliberative reasoning style if it actually improves the readability of the judgment.[46] Indeed, in our study we also explored the extent to which reasoning styles may influence the perceived reading ease of a judgment. In other words, we asked ourselves: does a particular style of reasoning lead to an increased degree of perceived readability? The results of these analyses can be seen in Figure 6.

Figure 6. Mean scores on perceptions of readability for the three reasoning styles, for both lawyers and general public



The response scale ranged from 1 (very negative evaluation of readability) to 7 (very positive evaluation of readability). [47]

Whereas for lawyers a deliberative reasoning style leads to an increase in perceived readability compared to the other two styles, for the general public no effect is visible. This would suggest that the use of a deliberative reasoning style may make case law **[426]** more palatable to *lawyers* but not to a lay audience of the general public. If deliberative reasoning would indeed improve the readability of the judgment for lawyers, that might be a argument in itself for its use in practice. For now, however, the issue whether that fact in itself is a sufficiently weighty argument to start motivating deliberatively 'en masse' is, as far as we are concerned, still open for further discussion.

V. CONCLUSION

At first glance, we might seem to have struck a rather humbling result with our study into judicial reasoning styles and their effects on the acceptance of the underlying judgment. Yet, appearances can be deceiving. While lawyers may feel that society needs deliberative reasoning, it turns out that deliberative reasoning does not actually have a significant impact on the social acceptance of

[45] In general, empirical evidence as such does not dictate legal answers to legal questions. In fact, there may be norms, values, and normative arguments at stake that take precedence over any empirical findings. See eg I. Giesen, The Use and Incorporation of Extralegal Insights in Legal Reasoning, 11(1), Utrecht Law Review, pp. 1–18 (2015), especially p. 3; L.F.M. Ansems, Procedural Justice on Trial, pp. 130–135 (PhD Utrecht University, 2021).

[46] Moreover, deliberative reasoning may perhaps enhance the predictability of the law for legal practitioners. We have not studied or tested that theory any further, but this might be a hypothesis worthy of further empirical research.

[47] Thus, a value below 4 indicates that one tends to evaluate the readability of the judgment negatively and a value above 4 indicates that one tends to evaluate it positively.

judgments. This is an important finding for improving the debate on the desirability of judicial styles of reasoning. We hope that this debate, which no doubt has not yet come to an end, will hopefully continue at a better informed, more nuanced level.