

# Understanding Public Confidence in American Courts

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*While studies of public confidence in institutions have long been a part of the public opinion literature, systematic analysis of public confidence in America's lower courts has been missing. This is troubling, especially since support for the rule of law is integral to a democracy and support for courts essential to the operation of the rule of law. I offer an explanation of public support for lower courts, finding that experience with courts, perceptions regarding the fairness of court procedures, and choices made over institutional design all play a role in explaining the public's support for state courts.*

What is “democracy?” This perennial question motivates us to consider all manner of governmental functions and institutions: a written constitution, a representative legislature, the separation of powers, notions of federalism. Yet all these things exist only after we consider the most fundamental of requirements for government: the operation of the rule of law. Indeed, political philosophers have spent much time considering what the rule of law is, how it is best protected, and what requirements it demands (see, e.g., Fallon 1997; Fletcher 1996; Nardin 2000, 2001; Waldron 2004). One notion that emerges from the scholarship regarding the rule of law is that there is a concomitant requirement for institutions charged with its keeping. In other words, the rule of law requires some institution (courts) to protect it while also itself adhering to it. Given the vulnerability and “weakness” of courts as institutions (Caldeira and Gibson 1992), courts need public support to function adequately. Therefore, in order that the rule of law remain operative, citizens need to trust the institution charged with its keeping. Hence, the issue of what drives support for courts looms large.

Of course, all political institutions need some, albeit unknown, levels of support among the public (Baum 2003; Caldeira 1991; Carp and Stidham 2001, 2004; Marshall 1989). After all, “democratic government rests on the support of the public” (Franklin and Kosaki 1995, 370). For the judiciary, this support is especially important—without some reservoir of

good will or some level of support for and confidence in the justice system, people may be less willing to participate in the system as a juror and less likely to bring conflicts into the system for resolution (Roberts and Stalans 1997). They may also be less likely to comply with the rulings emanating from those courts (Murphy and Tanenhaus 1968a, 1968b; Tyler 1990; Tyler and Rasinski 1991; Tyler, Casper, and Fisher, 1989), and hence, the rule of law suffers.

It is also the case that public opinion may actually affect these lower courts and so confidence in these institutions is doubly worthy of our consideration. It is debatable whether the U.S. Supreme Court is attentive to public opinion (Flemming and Wood 1997; McGuire and Stimson 2004; Mishler and Sheehan 1993; Norpoth and Segal 1994; Segal and Spaeth 2002) since it arguably has little incentive to concern itself with the will of the people. However, with regard to state courts, we may well expect public opinion to affect decision making. Most judges are elected by the public; others are appointed via the state legislature. We would think (and it has been found) that in both cases, judges will feel some accountability to the public, either directly or indirectly via elected representatives, and so their decisions may be influenced by public opinion (Brace, Hall, and Langer 1996, 2001; Hall 1987, 1992). If that is the case, it is absolutely necessary to understand exactly how the public forms its attitudes about these lower courts.

What does drive support for our nation's courts? We know quite a bit about what drives support for the U.S. Supreme Court.<sup>1</sup> What is missing, however, is much in the way of systematic analysis of public confidence in the *lower* courts. “. . . [P]ollsters and scholars have paid little attention to the relationship between court and public for the state courts” (Caldeira 1991, 303). Is support for state courts driven by the same things as support for the U.S. Supreme Court? In fact, there are many reasons to think that support for state courts may be a function of dramatically different factors. It is, after all, the state courts with which the general public is most likely to have had some contact. Levels of support may well be affected by such interaction. State courts also differ in their institutional designs, both from the Supreme Court and from one another. Do different institutional arrangements beget varying levels of public support? Are, for example, courts staffed with political appointees less (or more) trusted than those who ascend the bench via partisan election? Surely those charged with decisions about the design of state institutions (as well as those engaged in institutional designs for newly emerging democracies) would be interested to know.

In this article, I offer an explanation of lower court approval, thus providing one of the first systematic (using national survey data) and multivariate explanations of public confidence in these state institutions.<sup>2</sup> The article proceeds as follows: the first section

<sup>1</sup>Scholars have found that knowledge of the Court (Caldeira and Gibson 1992; Gibson, Caldeira, and Baird 1998), attention to the Court (Caldeira 1986; Caldeira and Gibson 1992), commitment to democratic values (Caldeira and Gibson 1992), education (Caldeira and Gibson 1992; Handberg and Maddox 1982), presidential popularity (Caldeira 1986), efficacy (Caldeira and Gibson 1992), commitment to social order (Caldeira and Gibson 1992), and activism (Caldeira 1986) are all related to support for the Court. Earlier studies also found party affiliation, ideology, and race, among other factors, to be consequential (Dolbear and Hammond 1968; Kessel 1966).

<sup>2</sup>State courts are defined rather grossly in this study due to the wording of the questions in the survey on which I rely. The primary survey question of interest asks how much confidence the respondent has in “. . . the courts in your community.” This means, therefore, that I am unable to make distinctions between state trial and appellate courts. Were I to rely upon measures referencing only one level or the other to explain support, this would become problematic. However, because the influences I test are theoretically (and empirically) applicable to either level, the problem is attenuated. (One of my variables, method of selection, could plausibly be affected by this issue. However, perhaps because empirically speaking, most states select their trial and appellate courts in the same ways, measuring selection system via the trial court mechanism rather than the supreme court mechanism changes nothing in the analysis.) Of course, one would *like* to have a more specific referent in the dependent variable.

examines the potential effects of experience, perceptions of procedure, and institutions on confidence; the second discusses data and measures; the third section explains the results of the multivariate model; and the final section draws conclusions and considers the impact of the findings for the operation of the rule of law.

## Modeling Confidence in State Courts

Because so few attempts to understand confidence in state courts have been made, we start, in many ways, with a clean slate.<sup>3</sup> I argue that three factors explain, or have the potential to explain, support for state courts: the experience a person has had with them, attitudes a person has regarding the fairness of the procedures employed by them, and the institutional designs of them. The theoretical expectations regarding these categories of explanatory factors are developed below.

### Experience and Knowledge

Experience with state courts should independently weigh on court evaluations. While “to know the Court is to love it” has been found to hold with regard to public perceptions of the United States Supreme Court, and even for discussions of the high courts of other nations (Gibson, Caldeira, and Baird 1998), the same may not hold true for lower state courts. We are no longer dealing with courts that the normal person has a very small likelihood of experiencing or even seeing directly. Instead, we are talking about the very courts with which people deal virtually whenever they deal with a court. These experiences may well impact an individual's evaluation of these institutions.

Of course, type of experience matters as well. Benesh and Howell (2001), in their study of confidence in Louisiana's state courts, took the common-sense approach with respect to experience that defendants will be less supportive of the courts after having dealt with them than would someone who was a juror, for example. Wenzel et al. (2003) expected and found similarly. The key for Benesh and Howell was that defendants have less control over the outcome of their case while simultaneously having the highest of stakes in that outcome. A juror, on the other hand, has more control over the outcome but very little personal stake in the resolution of any given case. This affects

<sup>3</sup>But see Wenzel, Bowler, and Lanoue (2003), which considers type of experience, selection system, information, and demographics.

institutional evaluations by affecting psychological comfort level (Benesh and Howell 2001). Borrowing this theoretical construct, I argue that the influence of experience on support is a function of the type of participation an individual has experienced.<sup>4</sup>

While having (certain types of) experience may well damage one's opinion of the courts, having real information and knowledge about the courts may operate differently. Perhaps knowledge implies interest, and interest breeds approval. It may be that Gibson, Caldeira, and Baird (1998) are right that to know is to love, so long as we are really talking about actual knowledge and not experience. Knowledge of the state courts may enhance the legitimacy of the courts and thereby people's confidence in them as people find out what they are supposed to stand for and what they are supposed to do and are exposed to the legitimizing symbols of courts (Casey 1974; Gibson, Caldeira and Spence 2003a). Knowledge could, of course, prove to have the exact opposite effect, as knowledge may erode favorable stereotypes leaving the knowledgeable with a picture of the courts that, while informed, is less favorable than would be an uninformed vision (Sarat 1975). It remains an empirical question, then, as to what effect knowledge has on confidence in the courts and so I test its influence here.

### Fairness of Procedures

The procedural justice literature argues that support for courts comes not only from satisfaction with court experiences, but also from perceptions of the fairness of procedures employed there (Baird 2000; Fossati and Meeker 1997; O'Barr and Conley 1988; Tyler 1990, 1994; Tyler, Casper and Fisher 1989; Tyler and Rasinski 1991; Tyler, Rasinski, and McGraw 1985).<sup>5</sup>

<sup>4</sup>It is of course the case that some defendants and some plaintiffs win and so it might be argued that I ought to consider the outcome of the case for a particular participant as well. However, I argue (and Benesh and Howell 2001 argue too) that winning or losing is not determinative of experience's effect on court support. Rather, the role in which the respondent experiences the courts (along with his or her perceptions about the fairness of court procedures) colors his or her judgment about them. A focus on the type of experience along with perceptions of procedural justice, then, is more appropriate. It should be noted as well, though, that even were I interested in satisfaction with outcome, I would be unable to test for it because the survey does not ask respondents how satisfied with their outcome they were.

<sup>5</sup>It is not only the evaluation of courts that are arguably tied to evaluations of procedure. Hibbing and Theiss-Morse (1995) argue that Congress is the least-liked national government institution specifically due to negative evaluations of its transparent procedures, and Tyler (1990) has argued for the role of procedure in institutional evaluations of police and other political institutions as well.

While some scholars argue over whether legitimacy affects compliance (Gibson 1989, 1991; Mondak 1993; Tyler and Rasinski 1991), there is no debate, especially at the lower court level, that perceptions about procedural justice weigh heavily in the public's evaluations of lower judicial institutions.<sup>6</sup> Some argue that procedural justice considerations necessarily rest on knowledge of institutional procedures, however, and so, given the general lack of information citizens have about courts, perceptions of fair procedures can hardly be expected to influence legitimacy (Gibson 1991). Nonetheless, because information at the state court level is possibly driven by experience and by contact with the courts or even by television and movie portrayals, while such interaction or portrayal is a rare exception at the High Court level Gibson discusses, it seems plausible that people's perception of how the courts handle cases will be explicitly related to their confidence in those institutions. For this reason, understanding confidence in lower courts requires considering perceptions of procedural fairness.

### Institutional Design

The literature on state courts makes repeated reference to and heavy reliance on the fact that institutional arrangements and procedures matter to decision making at this level. Brace and Hall (1990; Hall and Brace 1989) argue that institutions condition judicial decision making, influence judicial behavior, and generally affect the operation of the state courts. The public may also be sensitive to the potential (or even assumed) effects of institutions and so view some designs more favorably than others. In short, institutional design may affect public perceptions of the courts just as they affect court behavior itself.

The public may evaluate the institutional design of courts, in particular, in terms of independence versus accountability (Webster 1995). Both judicial independence and judicial accountability have their proponents and the debate over which is more desirable for society (and, incidentally, for the rule of law)

<sup>6</sup>One might posit that causality runs in the opposite direction; e.g., that support for institutions causes perceptions about the fairness of procedures. However, the only studies that suggest this directionality are those conducted at the Supreme Court level (see, e.g., Gibson 1991). All of the studies conducted at the lower court level have found the causal direction to be from perceived fair procedures to enhanced support (see, e.g., Tyler and Rasinski 1991). Indeed, Tyler (1994) actually considers questions such as those I employ here to measure procedural justice as antecedents to that concept and so the claim that they cause confidence (and not vice versa) is further strengthened.

is longstanding (see, e.g., Webster 1995).<sup>7</sup> Of course, we need evidence regarding the public's preferences over accountability and independence in order to determine how we might expect institutions to affect confidence. Wenzel, Bowler, and Lanoue assume that the public prefers accountability, arguing that "more citizens are populists than elitists and that they prefer having an influence over political outcomes" (2003, 196). For that reason, they expect the public to be more supportive of courts when they are accountable. However, survey research at both the state and national level indicates that "The public truly wants independent judges" (Heagarty 2003, 1305). Guided by this more solid evidence of public preferences, I expect that institutional features enhancing independence will contribute to confidence in state courts, while those promoting accountability will detract from it.

That institutional features may matter is plausible, but which institutional features are relevant? In considering the answer to that question, I deem it important to consider both effect and public perception. An institutional feature ought to be considered only if an argument can be made that choices over its design will affect court operation. Additionally, because we are concerned with public perceptions of courts, only those features about which we might assume the public has some information are relevant. I argue that only one institutional feature fits these two criteria: selection mechanism.<sup>8</sup> Elective systems beget greater opportunity for accountability while appointive systems beget a higher level of independence (Dubois 1980; Dunn 1976; Herndon 1962; Lovrich and Sheldon 1983; but see cautions in Hall 2001).<sup>9</sup>

<sup>7</sup>When speaking of the judiciary, independence and accountability are, in effect, polar opposites. An entirely independent judiciary is one that owes its tenure to no one and that makes its decisions without fear of adverse consequences, while a completely accountable judiciary is one that owes its tenure to the public or another political institution and so, presumably, bears the preferences of that body in mind when making decisions.

<sup>8</sup>I also considered including level of professionalization, dissent rate, and the rate of judicial review as potential institutional features affecting public confidence in courts. Certain operationalizations of the concept of professionalism, like length of term, for example, are arguably related to the independence of courts; e.g., courts with longer terms are assumed to be more independent than those with shorter terms (DiTullio and Schochet 2004; Larkin 2001; Moyer 2002). Additionally, high dissent rates and high rates of judicial review of legislation could be indicators of independence. However, none of these seem to be the kinds of institutional features about which the average respondent would have any information. (And none of them, incidentally, are significant when entered into the model. See note 19.)

<sup>9</sup>I also control for baseline trust in institutions, crime rate, and various demographic variables. This is, of course, necessary to

## Data and Method

In order to test my theory of confidence in lower state courts I use data from a recent survey conducted by the National Center for State Courts, funded by the Hearst Corporation. That survey, entitled "How the Public Views the State Courts," was conducted via telephone interviews between January 13 and February 15, 1999.<sup>10</sup> I supplement that survey with information specific to the various state systems including method of selection (obtained from the Bureau of Justice Statistics 1998) and crime rate (obtained from the FBI Uniform Crime Reports 1998).

### Specific Hypotheses

I advance the following specific hypotheses regarding confidence in state courts.

- H1: Level of confidence in the state courts is affected by type of experience, with those with a low stake in and much control over outcome (e.g., jurors) more supportive than those with a high stake in and little control over outcome (e.g., defendants and plaintiffs). Additionally, indirect experience (e.g., knowing someone involved with the courts) will enhance support, and knowledge will affect support, though I am agnostic as to the directionality of its influence.*
- H2: Confidence in the state courts is enhanced by perceptions of procedural fairness.*
- H3: Confidence in state courts is affected by the institutional design of the courts; confidence is diminished in states where judges are elected via partisan election.*

In order to test these hypotheses, I employ ordered probit. This method is appropriate because the dependent variable has four possible and ordered realizations, as described below.

### Confidence in the Court: The Dependent Variable

The dependent variable in this analysis is the level of confidence enjoyed by state and local courts. The

assure validity of the model. Information on the theoretical expectations for those variables as well as their specific operationalizations can be found in Appendix A on the *Journal of Politics* website: <http://www.journalofpolitics.org>.

<sup>10</sup>Interviews were conducted with 1,800 American adults. Staff from the National Center for State Courts designed the survey in collaboration with colleagues from the University of Nebraska at Omaha's Public Policy Center and Scientific Resources for the Law, Inc. The Public Opinion Laboratory of Indiana University completed the interviews. The margin of error for the survey's findings is +/-2.3%.



survey asked, “What is your level of confidence in the courts in your community?” Responses were coded 1 for “no confidence at all,” 2 for “only a little confidence,” 3 for “some confidence,” and 4 for “a great deal of confidence.”<sup>11</sup>

## The Independent Variables

The independent variables include experience, knowledge, perceptions of procedural justice, institutional design, and the aforementioned controls. They are operationalized as follows.

### Experience

Two different types of experience are included in the analysis: direct and indirect. First, direct experience is measured by responses to questions about whether the respondent had various types of experiences. Using Benesh and Howell’s (2001) argument that stake in outcome coupled with control over that outcome drive confidence in the courts, I code two dichotomous variables. Low stake, high control is coded 1 for any individual indicating that he or she has, at some point, served on a jury. High stake, low control is coded 1 if the respondent has ever been a plaintiff or a defendant. Those indicating they were either court observers or witnesses along with those reporting either no experience or some other miscellaneous experience comprise the excluded category.<sup>12</sup>

<sup>11</sup>It is important to consider the ramifications of the specific question wording of the dependent variable. There has been a serious debate, especially among judicial scholars (see, e.g., Gibson, Caldeira, and Spence 2003b) as to whether questions about “confidence” in institutions reference the underlying dimension of interest—that of institutional legitimacy as a whole, or “diffuse” support, or “loyalty”—or rather, instead, they become mere proxies for the respondent’s level of support for the outputs of the institution (e.g., “specific” support). I do not seek to enter this debate, instead arguing that we will learn something interesting about state courts even using this potentially flawed measure of overall support. Indeed, I am quite comfortable noting that this dependent variable “reflects a blend of short-term and long-term judgments of the institution” (Gibson, Caldeira, and Spence 2003b, 364). We know little about what drives a respondent to say that she has “a great deal of confidence” in the state courts or that he has “no confidence at all” in “the courts in [his/her] community.” This article seeks to fill that gap, leaving to another day a careful discussion of the relationship between specific and diffuse support at the state court level, as well as debates over how best to measure those concepts.

<sup>12</sup>Since this survey asks for any involvement over the respondent’s lifetime, I cannot be sure upon which experience the respondent is drawing when answering questions about perceptions of state and local courts. However, including all kinds of involvement seems to be the best way to measure the overall effect of exposure to courts. This allows me to determine whether one type of experience stands out as particularly positive or negative; i.e., whether one type of experience trumps the others in terms of what drives opinions of the courts.

Indirect experience is measured via an open-ended question that asks whether the respondent has any other sources of information about the courts. If the respondent listed an attorney friend, a judge, or someone he or she knew who had served as a juror, I coded the respondent as having indirect experience, zero otherwise. I expect the indirect experience and low-stake variables to be positive and the high-stake variable to be negative.

Closely related to experience is knowledge of the court. I use self-reported knowledge (respondents were asked “Overall, how much would you say you know about the courts?”), an index of attention to the news, and education level to measure knowledge. This allows for a comparison among what respondents know in general (arguably measured by education), how much information respondents arguably have in general (which results from reading the newspaper, watching the news, or listening to the radio), and what respondents think they know about courts specifically (measured by the survey question). Self-reported knowledge takes on four values: “A lot,” “Some,” “A little,” and “Nothing at all.” Education has six categories, ranging from grade school or less to postgraduate degree. Attention to the news is measured as the factor score resulting from a factor analysis of three questions asking how often the respondent watched the news, read a newspaper, or listened to news on the radio.<sup>13</sup>

### Procedural Justice

Procedural justice is measured via a battery of questions involving procedural evaluations of the state courts. These include questions similar to those used by Tyler (1994) and Fossati and Meeker (1997), such as whether constitutional protections are honored, whether judges are unbiased and fair, and whether bringing a court case is affordable. Because the battery of questions references both perceptions of *court* fairness and perceptions of *judicial* fairness, I employ two indices.<sup>14</sup> The first measures perceptions of the fairness

<sup>13</sup>Responses were recoded into dichotomous variables for each medium coding whether the respondent engaged in the activity regularly or not. The three dichotomous variables were then factor analyzed (using principal components analysis) and the resulting factor scores used as the variable. One factor was retained with an Eigenvalue of 0.49. (The results are extremely similar when the three variables are entered directly into the model rather than using a factor score; e.g., none are significant and no other results change. This operationalization, then, is more parsimonious and the admittedly low Eigenvalue, inconsequential.)

<sup>14</sup>The court measure combines positive responses to the following questions into a factor score (using principal components analy-

TABLE 1 Confidence in State Courts Ordered Probit

Variable	Coefficient	Standard Error	Significance Level
<b>EXPERIENCE</b>			
Low Stake	.17	.08	.047
High Stake	-.17	.08	.038
Indirect Experience	-.10	.09	.254
Knowledge	.10	.05	.046
<b>PROCEDURAL JUSTICE</b>			
Procedural Justice—Court	.18	.05	.000
Procedural Justice—Judge	.30	.06	.000
<b>INSTITUTIONAL FEATURE</b>			
Selection Method (Partisan or Not)	-.19	.08	.020
<b>DEMOGRAPHICS and OTHER CONTROLS</b>			
Baseline Confidence in Institutions	.76	.06	.000
Crime Rate	-.00	.00	.102
Education	.05	.03	.090
Attention to News	.01	.06	.842
Age	.00	.01	.782
Race	-.09	.10	.356
Gender	-.09	.07	.229
Income	.01	.02	.588
_cut1	-1.89	.27	
_cut2	-.88	.26	
_cut3	.92	.26	

N = 1,163; Wald  $\chi^2(15) = 333.09$ ; Prob >  $\chi^2 = .000$ ; Pseudo R<sup>2</sup> = .1628; LL = -1130.1277.

Data weighted for state population representation; robust standard errors are reported; all significance tests are two-tailed.

of the procedures used by courts, while the second measures perceptions of the fairness of the decision making of the judges. Both, because of how they are coded, are expected to enhance court confidence.

### Institutional Design

In order to test whether institutional features affect perceptions of the courts by the public, I employ a variable measuring selection system. States are coded as either using partisan elections or not.<sup>15</sup> Assuming

sis): “Courts adequately monitor the progress of cases,” “Courts make efforts to ensure adequate attorney representation,” “It is affordable to bring a case to court,” “Court rulings are understood by the people involved in the rulings,” and “Court personnel are helpful and courteous.” One factor is retained with an Eigenvalue of .80. The judge measure combines positive responses (e.g., those supportive of judges) to the following questions into a factor score: “Judges are generally honest and fair in deciding cases,” “Judges do not give adequate attention to each case,” “Judges’ decisions are influenced by political considerations” and “Elected judges are influenced by having to raise campaign funds.” One factor is retained with an Eigenvalue of .76.

<sup>15</sup>I consider actual selection system rather than the way the majority of judges ascend the bench because respondents are much more likely to be aware of the type of selection system employed

that the national surveys on point are correct, I expect this variable to be negative; the method most closely associated with producing “accountable” judges (partisan election) will engender less confidence than those purporting to enhance independence (all kinds of appointments as well as retention and nonpartisan elections).

### Results and Discussion

Table 1 presents the results of the analysis, with Figures 1a–4 providing information on the substantive impact of each of the significant variables.<sup>16</sup> Overall, confidence in state courts is indeed driven, in large part, by experience, perceptions of procedures,

by the state than the number of judges in, say, elective systems who are actually appointed to office before running for election. It is the actual institutional choice of how to select judges that should impact confidence in the courts, not the practice of putting judges into office for any particular judge.

<sup>16</sup>Appendix B, which can be found on the JOP website, <http://www.journalofpolitics.org>, also includes a table noting the specific predicted probabilities for each realization of the dependent variable when the independent variables are held at various levels.

FIGURE 1 Effects of Experience on Court Support

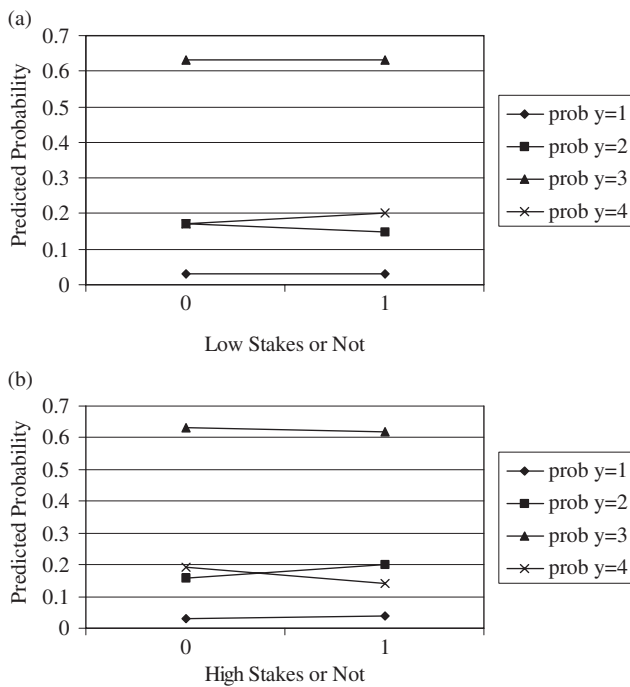
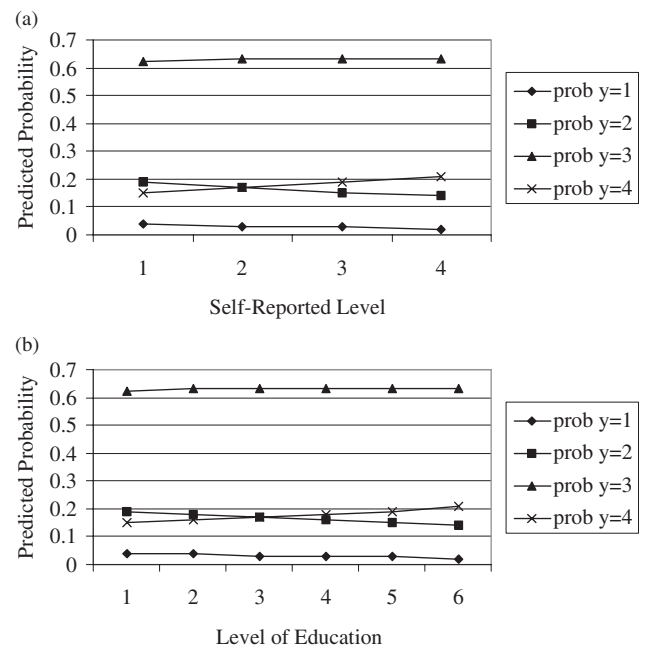


FIGURE 2 Effects of Knowledge on Court Support



and institutional features. I discuss each finding in turn.

### Experience

Type of experience does affect evaluations of courts. As reported in Table 1, defendants and plaintiffs (those included in the “High Stake” category) are much less supportive of the state courts than are those without experience (or those with miscellaneous experience types), and jurors (those included in the “Low Stake” category) are much more so. As seen in Figures 1a and 1b, those with a high stakes experience are much less likely to have “a great deal” of confidence in the courts than are those with low-stakes experiences and more likely to have only “a little” confidence in courts.<sup>17</sup> Obviously this has ramifications for the conditions affecting court approval, especially since fully 55% of those surveyed had some court experience (and, for nearly half of those, the experience had been either as a defendant or as a plaintiff).

Knowledge of courts also affects support: the more one (thinks one) knows about courts, the more highly one regards them. Figure 2a demonstrates that

level of confidence is affected by knowledge; the more knowledgeable are more likely to have “a great deal” of confidence in the courts and less likely to have “none” or “a little” confidence in the courts. Education is also marginally significant ( $p < .09$ ) and its effect is demonstrated in Figure 2b. The more education the respondent has, the more likely s/he will profess “a great deal” of confidence in the courts. Likewise, the more educated the respondent, the less likely he or she will have only “a little” (or even no) confidence.<sup>18</sup>

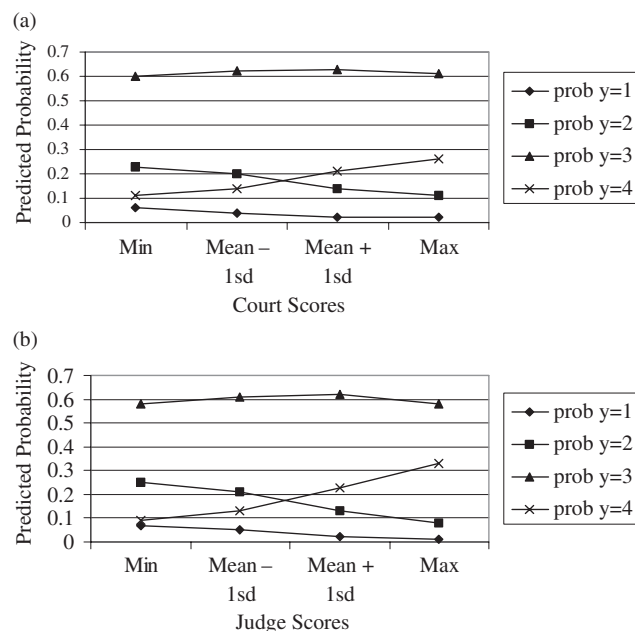
### Procedural Justice

Perceptions of the fairness of procedures are also mightily influential on confidence in the state courts. Indeed, as perceptions of the fairness of both courts and judges increases, so too does support for courts. The substantive effects presented in Figures 3a and 3b are notable. As respondents score higher on the first procedural justice factor (which focuses on courts), they are also more likely to identify themselves as individuals with “a great deal” of confidence in the courts (experiencing more than a 100% increase in the like-

<sup>17</sup>Predicted probabilities for all figures and for Appendix B were obtained using *Clarify* with all other variables set at their respective means. *Clarify* is available for download online at <http://gking.harvard.edu/stats.shtml>.

<sup>18</sup>One might read these results about knowledge and education to indicate a difference between “elite” and “mass” opinion on state courts. It is certainly true that scholars studying the Supreme Court, for example, have found differences between elite and mass opinion (see, e.g., Caldeira and Gibson 1992). However, from only these two potential indicators of elite status (where Caldeira and Gibson had 10), I am unable to make any broad claims about elite opinion.

**FIGURE 3** Effects of Procedural Justice on Court Support

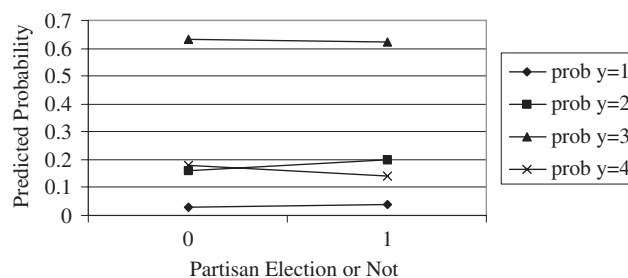


likelihood of having a great deal of confidence in the courts over its range). Likewise, those with lower scores are more likely to identify themselves as having no confidence in them than those with higher scores. Predicted probabilities based upon scores on the procedural justice factor focusing on judges present even starker influences: the likelihood of a respondent noting a great deal of confidence in courts more than triples over its range. Likewise, the likelihood that a respondent will have only a little confidence decreases by over 100%. Recall the questions that went into these indices: “Courts make efforts to ensure adequate attorney representation”; “It is affordable to bring a case to court”; and “Judges are generally honest and fair in deciding cases.” People who agree with these statements have more confidence in the courts. Clearly Tyler and his colleagues are correct: confidence in the courts is not solely determined by type of experience with them, but rather also by one’s impression of the ways in which cases are handled and decided.

### Institutional Design

I expected institutional design to affect confidence as well, arguing that citizens will have more confidence in independent courts. Selection system does indeed work as expected: in partisan election states, respondents have less confidence in the courts; they are more likely to have only a little confidence and less likely to have a great deal of confidence (as shown in Figure 4).

**FIGURE 4** Effects of Selection on Court Support



Valuing independence, respondents are less likely to highly regard elected courts.<sup>19</sup>

## Conclusions

What kinds of individuals are most and least likely to support the courts in their communities, then? Considering the results of the analysis overall, it seems that a highly educated individual with experience as a juror and a strong understanding of the court system, who has a high level of baseline confidence in the institutions of government, and who lives in a state where judges are appointed and the crime rate is low will demonstrate the highest levels of confidence in state courts. On the other hand, a person without much formal education, who had been a defendant at least once in his or her life and does not consider him or herself to be informed about courts, who does not much trust the institutions of government and happens to live in a state with elected judges and a high crime rate will have the lowest levels. These types seem eminently reasonable and confirm some very interesting notions about what drives confidence in institutions. Some of the findings suggest influences over which the courts may have some control (e.g., perceptions of procedural fairness), but most suggest influences over which they do not (e.g., selection system, type of experience, baseline confidence, and crime rate).

<sup>19</sup>The other institutional features discussed in note 8 are all insignificant when entered into the model, thus lending support to the earlier contention that the public would not consider these influences, as it is quite unlikely to be aware of them. (No other substantive changes in the model result from their inclusion or exclusion.) Two of the control variables—baseline confidence in institutions and crime rate—are statistically and substantively important influences on confidence (see Table 1 and Appendix B). As respondents are more supportive, generally, of institutions, they are also more supportive of the state courts, while confidence in the state courts suffers from high crime rates (though the effect is only marginally significant [ $p < .10$ ]). None of the demographic variables are significant.



Seeking an explanation for support for state courts is highly salient today when politicians are publicly questioning judicial decisions and otherwise tampering with the independence of courts.<sup>20</sup> It is essential, at a time when courts are arguably under attack, to consider carefully what drives support for these institutions. Indeed, without a constituency, courts could suffer greatly at the hands of those seeking to control them. While this analysis shows that the public does, in large part, understand the law and respect the institution charged with its keeping (conditions necessary, according to Nardin (2001), for the successful operation of the rule of law), that the judiciary can do little to really enhance that confidence suggests that we remain vigilant lest the public (perhaps driven by zealous politicians) lose their faith in these important institutions. For if they do lose sufficient levels of faith in the courts—the institutions charged with promulgating and protecting the rule of law—what sort of future awaits our democracy?

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## References

Baird, Vanessa. 2000. "Building Institutional Legitimacy: The Role of Procedural Justice." *Political Research Quarterly* 54 (2): 333–54.

<sup>20</sup>Recent examples abound. Consider Congress' decision to strip the state courts of jurisdiction over Terry Schiavo's case and the subsequent backlash suffered both by state judge George W. Greer and the federal judges who refused to intervene (see, e.g., Goodnough 2005 and Stolberg 2005, wherein the House majority leader, Tom DeLay is quoted as threatening, "We set up the courts. We can unset the courts."). And what of House Judiciary Committee Chair James Sensenbrenner's letter to the 7th Circuit U.S. Court of Appeals in which he demanded that a decision in a sentencing case with which he disagreed be rectified (Possley 2005)? Additionally, many eyebrows were raised when Pat Robertson, on ABC's *This Week*, compared the damage done by "activist" judges to the September 11th terrorists (Robertson 2005).

- Baum, Lawrence. 2003. *The Supreme Court*. 8th ed. Washington: CQ Press.
- Benesh, Sara C., and Susan E. Howell. 2001. "Confidence in the Courts: A Comparison of Users and Non-users." *Behavioral Sciences and the Law* 19: 199–214.
- Brace, Paul, and Melinda Gann Hall. 1990. "Neo-Institutionalism and Dissent in State Supreme Courts." *Journal of Politics* 52 (1): 54–70.
- Brace, Paul, Melinda Gann Hall, and Laura Langer. 1996. "Judicial Choice and the Politics of Abortion: Institutions, Context, and the Autonomy of Courts." Presented at the annual meeting of the American Political Science Association, San Francisco.
- Brace, Paul, Melinda Gann Hall, and Laura Langer. 2001. "Placing State Supreme Courts in State Politics." *State Politics and Policy Quarterly* (Spring): 81–108.
- Bureau of Justice Statistics, Department of Justice. 1998. "State Court Organization." <http://www.ojp.usdoj.gov/bjs/abstract/sco98.htm> (February 7, 2006).
- Caldeira, Gregory A. 1986. "Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court." *American Political Science Review* 80 (4): 1209–26.
- Caldeira, Gregory A. 1991. "Courts and Public Opinion." In *The American Courts: A Critical Assessment*, eds. John B. Gates and Charles A. Johnson. Washington: CQ Press, pp. 303–34.
- Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36 (3): 635–64.
- Carp, Robert A., and Ronald Stidham. 2001. *The Federal Courts*. 4th ed. Washington: CQ Press.
- Carp, Robert A., and Ronald Stidham. 2004. *Judicial Process in America*. 6th ed. Washington: CQ Press.
- Casey, Gregory. 1974. "The Supreme Court and Myth: An Empirical Investigation." *Law and Society Review* 8 (Spring): 385–419.
- DiTullio, James E., and John B. Schochet. 2004. "Note: Saving this Honorable Court: A Proposal to Replace Life Tenure on the Supreme Court with Staggered, Nonrenewable Eighteen-year Terms." *Virginia Law Review* 90 (4): 1093–1149.
- Dolbeare, Kenneth M., and Phillip E. Hammond. 1968. "The Political Party Basis of Attitudes Toward the Supreme Court." *Public Opinion Quarterly* 32 (1): 16–30.
- Dubois, Phillip L. 1980. *From Ballot to Bench: Judicial Elections and the Quest for Accountability*. Austin: University of Texas Press.
- Dunn, Patrick Winston. 1976. "Judicial Selection and the States: A Critical Study with Proposals for Reform." *Hofstra Law Review* 4 (2): 285–304.
- Fallon, Richard. 1997. "The Rule of Law as a Concept in Constitutional Discourse." *Columbia Law Review* 97 (1): 1–56.
- Federal Bureau of Investigation, Criminal Justice Information Services Division. 1998. "Crime in the United States." <http://www.fbi.gov/ucr/98cius.htm> (February 7, 2006).
- Flemming, Roy, and Dan B. Wood. 1997. "The Public and the Supreme Court." *American Journal of Political Science* 41 (2): 468–98.
- Fletcher, George. 1996. *Basic Concepts of Legal Thought*. Oxford: Oxford University Press.
- Fossati, Thomas E., and James W. Meeker. 1997. "Evaluations of Institutional Legitimacy and Court System Fairness: A Study of Gender Differences." *Journal of Criminal Justice* 25 (2): 141–55.
- Franklin, Charles H., and Liane C. Kosaki. 1995. "Media, Knowledge, and Public Evaluations of the Supreme Court." In *Contemplating Courts*, ed. Lee Epstein. Washington: CQ Press, pp. 352–75.

- Gibson, James L. 1989. "Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance." *Law and Society Review* 23 (3): 469–96.
- Gibson, James L. 1991. "Institutional Legitimacy, Procedural Justice, and Compliance with Supreme Court Decisions: A Question of Causality." *Law and Society Review* 25 (3): 631–35.
- Gibson, James L., Gregory A. Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92 (June): 343–58.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003a. "The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33 (2): 535–56.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003b. "Measuring Attitudes Toward the United States Supreme Court." *American Journal of Political Science* 47 (2): 354–67.
- Goodnough, Abby. 2005. "In Schiavo Feeding-Tube Case, Notoriety Finds Unlikely Judge." *The New York Times* <<http://www.nytimes.com/2005/03/17/national/17greer.html>> February 7, 2006.
- Hall, Melinda Gann. 1987. "Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study." *Journal of Politics* 49 (4): 1117–24.
- Hall, Melinda Gann. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54 (2): 427–46.
- Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95 (2): 315–30.
- Hall, Melinda Gann, and Paul Brace. 1989. "Order in the Courts: A Neo-Institutional Approach to Judicial Consensus." *Western Political Quarterly* 42 (3): 391–407.
- Handberg, Roger, and William S. Maddox. 1982. "Public Support for the Supreme Court in the 1970s." *American Politics Quarterly* 10 (3): 333–46.
- Heagarty, J. Christopher. 2003. "Selection of State Appellate Judges: Judicial Campaigns and Voters' Experience: Public Opinion and an Elected Judiciary: New Avenues for Reform." *Willamette Law Review* 39 (3): 1287–1311.
- Herndon, James. 1962. "Appointment as a Means of Initial Accession to Elective State Courts of Last Resort." *North Dakota Law Review* 38 (1): 60–73.
- Hibbing, John R., and Elizabeth Theiss-Morse. 1995. *Congress as Public Enemy: Public Attitudes Toward American Political Institutions*. New York: Cambridge University Press.
- Kessel, John H. 1966. "Public Perceptions of the Supreme Court." *Midwest Journal of Political Science* 10 (2): 167–91.
- Larkin, Elizabeth A. 2001. "Judicial Selection Methods: Judicial Independence and Popular Democracy." *Denver University Law Review* 79 (1): 65–89.
- Lovrich, Nicholas P., Jr., and Charles H. Sheldon. 1983. "Voters in Contested, Nonpartisan Judicial Elections: A Responsible Electorate or a Problematic Public?" *Western Political Quarterly* 36 (June): 241–56.
- Marshall, Thomas R. 1989. *Public Opinion and the Supreme Court*. Boston: Unwin Hyman.
- McGuire, Kevin T., and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *Journal of Politics* 66 (4): 1018–35.
- Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Counter-majoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87 (1): 87–101.
- Mondak, Jeffery J. 1993. "Institutional Legitimacy and Procedural Justice: Reexamining the Question of Causality." *Law & Society Review* 27 (3): 599–609.
- Moyer, Thomas J. 2002. "Address at the Annual Meeting of the Ohio Bar Association (May 16, 2002)." [http://www.sconet.state.oh.us/Communications\\_Office/Speeches/2002/0516cjm.asp](http://www.sconet.state.oh.us/Communications_Office/Speeches/2002/0516cjm.asp) (February 7, 2006).
- Murphy, Walter F., and Joseph Tanenhaus. 1968a. "Public Opinion and the Supreme Court: The Goldwater Campaign." *Public Opinion Quarterly* 32 (1): 31–50.
- Murphy, Walter F., and Joseph Tanenhaus. 1968b. "Public Opinion and the United States Supreme Court: A Preliminary Mapping of Some Prerequisites for Court Legitimation of Regime Changes." *Law and Society Review* 2 (2): 357–82.
- Nardin, Terry. 2000. "International Pluralism and the Rule of Law." *Review of International Studies* 26 (5): 95–110.
- Nardin, Terry. 2001. *The Philosophy of Michael Oakeshott*. University Park: Penn State University Press.
- Norpoth, Helmut, and Jeffrey A. Segal. 1994. "Popular Influence on Supreme Court Decisions: Comment." *American Political Science Review* 88 (3): 711–16.
- O'Barr, William M., and John M. Conley. 1988. "Lay Expectations of the Civil Justice System." *Law and Society Review* 22 (1): 137–61.
- Possley, Maurice. 2005. "Lawmaker Prods Courts, Raises Brows; Demands Longer Term in Chicago Drug Case." *Chicago Tribune* <<http://pqasb.pqarchiver.com/chicagotribune/access/865093541.html>> February 7, 2006.
- Roberts, Julian V., and Loretta J. Stalans. 1997. *Public Opinion, Crime, and Criminal Justice*. Boulder: Westview Press.
- Robertson, Pat. 2005. Interview with George Stephanopoulos on ABC's *This Week*, Aired May 1, 2005. <http://www.patbertson.com/PressReleases/thisweekgs.asp> (February 7, 2006).
- Sarat, Austin. 1975. "Support for the Legal System: An Analysis of Knowledge, Attitudes and Behavior." *American Politics Quarterly* 3 (1): 3–24.
- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.
- Stolberg, Sheryl Gay. 2005. "Majority Leader Asks House Panel to Review Judges." *The New York Times* <<http://query.nytimes.com/gst/fullpage.html>> February 7, 2006.
- Tyler, Tom R. 1990. *Why People Obey the Law*. New Haven: Yale University Press.
- Tyler, Tom R. 1994. "Governing Amid Diversity: The Effect of Fair Decision Making Procedures on the Legitimacy of Government." *Law & Society Review* 28 (4): 809–31.
- Tyler, Tom R., Jonathan D. Casper, and Bonnie Fisher. 1989. "Maintaining Allegiance Toward Political Authorities: The Role of Prior Attitudes and the Use of Fair Procedures." *American Journal of Political Science* 33 (3): 629.
- Tyler, Tom R., and Kenneth Rasinski. 1991. "Procedural Justice, Institutional Legitimacy, and the Acceptance of Unpopular U.S. Supreme Court Decisions: A Reply to Gibson." *Law and Society Review* 25 (4): 621–30.
- Tyler, Tom, Kenneth Rasinski, and Kathleen McGraw. 1985. "The Influence of Perceived Injustice on the Endorsement of Political Leaders." *Journal of Applied Social Psychology* 15 (8): 700–25.

- Waldron, Jeremy. 2004. "The Rule of Law as a Theater of Debate." In *Dworkin and his Critics*, ed. Justine Burley. Malden, MA: Blackwell Publishing, pp. 319–36.
- Webster, Peter D. 1995. "Selection and Retention of Judges: Is There One "Best" Method?" *Florida State University Law Review* 23 (1): 1–34.
- Wenzel, James P., Shaun Bowler, and David J. Lanoue. 2003. "The Sources of Public Confidence in State Courts: Experience and Institutions." *American Politics Research* 31 (2): 191–211.

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