

Electing to Trust: An Exploration of the Relationship between Public Opinion and Localized Processes of Judicial Selection

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Public trust in government depends largely on the belief that institutions are fair and respond to the will of the governed. We expand on past research on the relationship between public opinion and state courts by studying how selection methods for both state and local courts influence popular attitudes about the judicial branch. Employing individual-level survey data on the responsiveness and fairness of state supreme courts and local trial courts, we find that respondents in states using elections to choose judges for state courts believe the judicial system is fairer. Further, the use of non-partisan elections for local trial courts has a positive effect on public evaluations of judicial fairness. However, views on judicial responsiveness are unaffected by means of selection at either the state or local level. Thus, nonpartisan or even partisan judicial elections do not have a negative effect on our measures of trust; indeed, when elections do have an effect, it is a positive one.

While much effort has been invested to examine public trust in the office of the presidency and Congress, such a level of effort has not been matched for the judicial branch, particularly at the state and local levels. While trust in the judicial branch at the national level is conditioned by the public's extremely limited impact on the selection process for the U.S. Supreme Court, the significant role the public plays at the state and local level in judicial selection would appear worthy of scrutiny. To do so, we utilize a unique national survey that asked respondents a wide-ranging series of items gauging their attitudes—particularly dimensions of trust—toward the judicial system. In this paper, we examine how state and local courts' methods of selecting judges condition the relationship between public opinion and the courts. By doing so, we hope to delve deeper into the field of judicial politics by taking an alternative perspective from the focus of prior literature on federal courts to one which focuses on localized components of public attitudes about the judiciary.

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One of the most common arguments used to justify taking the judicial selection process out of the hands of the executive and allowing for elections has been that the public deserves a responsive judicial system. Many states continue to use a model based on the federal system in which the executive nominates and the legislature confirms judges to the bench. A second group of states attempted to create a system that allows the executive to retain control over the selection but gives the public a mechanism by which to remove judges when they deem necessary. Many view this combination process—commonly called the Missouri Plan or the Merit Plan—as a way to allow limited public input into the judicial selection process. A final group of states opted to remove the executive branch from the selection process altogether. These states require judges to run for election, in either partisan or nonpartisan elections.

The debate on the merits of selecting judges by popular vote is an ongoing one. At the extreme end of the spectrum, state Supreme Court justice candidates in Texas run for office under partisan labels with explicitly partisan platforms and are funded by parties and interest groups. Even in states with nominally nonpartisan elections, judicial candidates spend large sums of money and politicians and interest groups endorse them, a point well-illustrated by the 2011 Wisconsin Supreme Court election between incumbent Justice David Prosser and challenger JoAnne Kloppenburg, a race which became polarized between supporters and opponents of Governor Scott Walker's (R-WI) collective bargaining proposal (Davey 2011). Some scholars believe that such campaigning removes any pretense of judicial impartiality; others argue that it simply empowers the public to choose a judiciary that is in general congruence with popular ideological attitudes.

As far as the public is concerned, the impact of the method by which judges come to the bench has the potential to run in one of two directions. On one hand, it is possible that giving the public input into the selection process gives them a greater sense of control over the judiciary and thus improves their standing with the public. On the other, it is also possible that requiring judges to run for re-election removes the imprimatur of impartiality from the judiciary and encourages the public to view judges as yet another set of politicians, thus lowering their standing with the public. Analyzing the impact of the judicial selection processes on public trust in the judiciary is the purpose of this paper.

The Determinants of Public Opinion on the Judiciary

The nexus between public opinion and the judiciary is an area fertile for research, particularly at the local and state level. On the national level, the public generally places the Supreme Court on a pedestal of trust, respect,

and confidence at a level that is consistently above popular support for Congress and the president (Caldeira and McGuire 2005; Hibbing and Theiss-Morse 1995; Hoekstra 2003). The Court's unique position in the eyes of the public stems in part from the conception of the judiciary as impartial, fair, and not self-interested, in contrast to views about other branches of government (Hibbing and Theiss-Morse 2001). While past literature contends that the public, in general, is relatively inattentive to and unknowledgeable about the Supreme Court (Hoekstra 2003; Segal et al. 2005), other recent research has found the level of public knowledge about the Court is higher than that previously thought, particularly when using alternative measures which ask about the structure, purpose, and major decisions of the Court (Caldeira and McGuire 2005; Gibson and Caldeira 2009). Gibson and Caldeira (2009) also find a direct linkage—"positivity theory"—between attentiveness and loyalty to the Court.

On the state and local level, Jamieson, Hall, and Hardy (2008) report that state courts also enjoy, though to a lesser extent yet in a similar manner, the diffuse and general support for the Supreme Court held by the public. However, while justices rise to the Supreme Court through a uniform system of presidential appointment and Senate confirmation, a myriad of different selection processes fill the robes of state court judges and justices: appointment, popular elections (both partisan and nonpartisan), and hybrid systems that combine elements of both (e.g., the Missouri Plan or Merit Plan). The Supreme Court's reservoir of diffuse support derives from its relative separation from the political battles of the Beltway and the consequent public perception that it is apolitical or even the protector of the "American civil religion" (Hibbing and Theiss-Morse 1995, 2003; Levison 1979; Scheb and Lyons 2001).

However, for state supreme courts, the insertion of electoral processes into the relationship between judicial institutions and the public adds a new and compelling dimension to the normative and pragmatic struggle between the values of judicial independence and judicial accountability. This is particularly applicable in the changing context in which judicial elections now occur. In 1989, James L. Gibson predicted that—while the public generally views their state courts as relatively legitimate—the rise of partisan campaigns would likely negatively affect their diffuse support in the future. Hojnacki and Baum (1992) contend that judicial races are quickly becoming a part of the normal political fabric, with voters looking for issues they can use to discriminate between candidates. Further, they find that political stances by judicial candidates are beginning to sway voters as they do in legislative and executive races.

As further evidence that judicial races have become akin to those in the other branches of government, Klein and Baum (2001) find that party affilia-

tion is a significant determinant of voter choice in them as well, and thus the choice between partisan and nonpartisan judicial elections is not merely an academic debate but one that has very real consequences for the judicial system. In 2007, Klein and Baum expanded upon their previous research to detail the differences between state Supreme Court races in 1998 and those in 2002. In the space of just two election cycles, participation improved dramatically. In 2002, fewer people rolled off from the gubernatorial elections and began participating in judicial elections. This rise in levels of participation may very well indicate that the public is paying closer attention to judicial campaigns and the impacts that their results will have. Both Melinda Gann Hall (2007) and Chris Bonneau (2007) concur in the finding that state judicial elections are increasingly looking like traditional congressional and state legislative races; as one example, judicial races now often have either the same or an even greater number of candidates running for office. However, in their collaboration on a provocative book titled *In Defense of Judicial Elections*, Bonneau and Hall (2009) contend that the expansion and politicization of judicial elections has not had an adverse effect on public opinion towards those courts. This finding is supported by Gibson et al.'s (2008) panel survey research during the 2007 Pennsylvania State Supreme Court elections.

Thus, while the use of political campaigns in judicial races may tarnish the image of state and local judges and thus negatively affect popular evaluations of the judiciary, it is also plausible, as Bonneau and Hall (2009) argue, that the use of elections as a judicial selection method may have a long-term effect in increasing popular support by giving the public greater input into their state and local judicial systems and by creating judiciaries that operate in greater congruence with public opinion. To this point, Brace and Boyea (2008) find that the use of elections as a means of judicial selection translates into the public having both direct—by affecting judicial behavior in anticipation of upcoming elections—and indirect—by affecting the composition of courts—effects on state judiciaries in cases involving capital punishment, while courts in states that did not utilize judicial elections exhibited no such popular responsiveness in death penalty cases.

Given these two competing viewpoints, is a state's method of judicial selection a significant factor in public trust in and support of state courts? Existing work on the subject has produced mixed results. Cann and Yates (2008) find that states' use of partisan judicial elections has a statistically significant and negative effect on public support for their state judiciaries. While only measuring for one level of public support (confidence), Benesh (2006) also finds a negative relationship between elective systems of judicial selection and public support for their state judiciary. Jamieson, Hall, and Hardy (2008) report their analysis of a 2007 Annenberg Survey, finding that

citizens in states that select their judges through partisan elections are less trustful of their state judiciaries “to operate in the best interests of the American people;” however, the same survey also finds that a solid majority (64%) supports elections as their preferred method of selecting judges. Alternatively, others find little relationship between trust and selection method. Wenzel et al. (2003) reach a null finding in their study of this relationship, noticing that the method of judicial selection has no effect on public support for state courts for those other than the highly-educated. The work of Kelleher and Wolak (2007) supports this null finding, concluding that the presence of partisan and nonpartisan judicial elections has no statistically significant effect on public trust of the state judiciary.

Within the context of this ongoing debate over the effects of state judicial elections on public opinion we examine the determinants of public trust by categorizing method of judicial selection on the state level (for the state supreme court) as well as by a separate set of models which categorize methods of judicial selection on the local level (for trial courts of general jurisdiction). Further, given the differences of tone in partisan and nonpartisan judicial races, we not only divide selection methods into the general appointive vs. elective schema but also test the differences between appointive systems and nonpartisan elections, appointive systems and partisan elections, and nonpartisan elections and partisan elections to determine the extent to which specific types of electoral processes have an effect on public trust. To isolate the impacts of these types of systems, these models utilize controls that past work has found play a role in affecting popular attitudes about courts.

Factors Influencing Public Trust in the Judiciary

Ultimately, multiple factors have the potential to affect the public’s trust in its state judiciary, and the literature identifies several significant ones and for which we control in our analysis below. Cann and Yates (2008) find that the level of the voters’ concern about the level of campaign contributions in judicial elections has—not unexpectedly—a negative effect on public trust of state courts. Kelleher and Wolak (2007) find that females, Latinos, and those with a higher level of “news consumption” possess higher levels of confidence in their state judiciaries; African Americans and those living in states with higher rates of government corruption and higher ratios of women and African Americans in office demonstrate lower levels of confidence.¹ Additionally, the *type* of experience a person or group has with the judicial system can matter a great deal. Benesh and Howell (2001) as well as Wenzel et al. (2003) find that—other than as a criminal or civil defendant—personal experience with the courts can have a positive effect on

respondents' trust in the courts. Wenzel et al. (2003) also demonstrate that greater levels of knowledge and education have a negative effect on public trust only in states that utilize partisan judicial elections. This echoes the earlier work of Lovrich and Sheldon (1983), who found that better-informed voters tend to support judicial independence, while less informed voters tended to support more public input and control of courts.²

A question that remains unresolved in the extant research—and addressed in this article—is whether or not the judicial selection process plays a role in voter perceptions of the judiciary itself. As Finley Peter Doone's Mr. Dooley famously noted, the Supreme Court “follows th' iliction returns,” and, with the increasing politicization of judicial elections at the state level, the effect of popular forces on state judiciaries is even more pronounced. This article will examine, controlling for the factors discussed above, whether the process of electing judges engenders or diminishes public trust for their state and local judiciaries, whether any differences exist between the use of nonpartisan or partisan elections in affecting our measures of public trust, and whether the relationship between public trust and means of judicial selection is comparable or divergent between state supreme courts and local trial courts. Given the expansion of the use of judicial elections to fill state and local benches, coupled with the particular need by courts in general for the public to support—and lend legitimacy to—its decisions (Caldeira and Gibson 1992; Tyler et al. 1989; Tyler and Rasinski 1991), this question is one of particular concern for the future of the design and operation of the American judicial and legal system on all levels, from small-claims courts all the way to the Supreme Court.

Data, Variables, and Hypotheses

Finding measures of the connection between citizens and the judiciary is a challenging task, particularly when the questions involve perceptions of state-level judicial behavior. For the purposes of this project, we employ a dataset originally compiled by Rottman, Hansen, Mott, and Grimes entitled *Public Opinion on the Courts in the United States* (2006). This instrument investigates respondents' faith in their state judicial system, interaction with the judicial system, and other issues. The surveys derive from a sample of 1,567 respondents randomly selected from across the United States in the spring of 2000. In addition to the questions regarding interactions with judicial system, the survey also collected a wealth of demographic data and asked a variety of questions about the fairness of the judicial process. To this data, we added two sets of three dichotomous measures—*Appointive System*, *Nonpartisan Elections*, and *Partisan Elections*—which specify the method of judicial selection in each state. We acquired data on the judicial selection

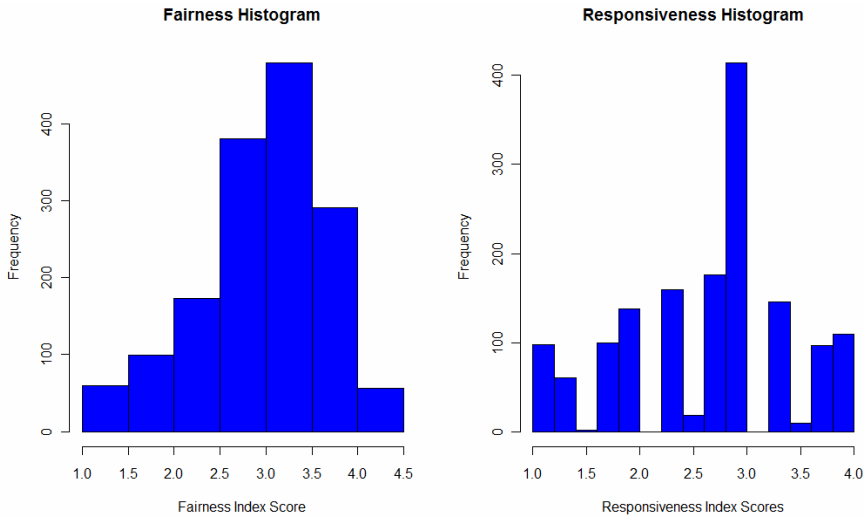
method for both the court of last resort and trial courts of general jurisdiction in each state from the American Bar Association (2000).³ Each observation reflects the selection methods utilized in the state at the time of the survey.⁴ The first set of these three binary variables encompasses courts of last resort (usually state supreme courts), and the second set applies to the manner in which judges are selected to local trial courts. For each model, we omit *Appointive System* as the reference category but also re-run the model with *Nonpartisan Elections* as the omitted category and report those results as well. Doing so allows us to differentiate between the effects of rival selection methods (i.e., partisan vs. nonpartisan, appointive vs. nonpartisan, and partisan vs. appointive).

We employ two index measures of “trust” in state and local courts as our dependent variables: *Responsiveness* and *Fairness*, each operationalized through a composite index of relevant questions. We concur with Gibson (2009) that public attitudes towards the judicial system are best examined through more detailed instruments (in addition to general measures of “approval,” “support,” etc.). Accordingly, these indices provide alternative and arguably deeper insight into the relationship between mass public opinion and the courts. Our first component of “trust” is *Responsiveness*. The survey asks respondents about their level of agreement or disagreement with three statements addressing the responsiveness of the courts to public needs: “Courts take the needs of people into account”; “Courts listen carefully to what people have to say”; and “Courts are sensitive to the concerns of the average citizen.” Likewise, our second component of trust—*Fairness*—contains two such statements (“The courts make decisions based on the facts,” and “Judges are honest in their case decisions.”) and two questions which ask how frequently respondents feel the following circumstances are attained (“How often do you think people receive fair outcomes when they deal with the courts?” and “How often do you think the courts use fair procedures in handling cases?”)

Combining each of these two sets of survey items produces highly reliable scales of *Responsiveness* (Cronbach’s $\alpha = 0.802$) and *Fairness* (Cronbach’s $\alpha = 0.805$). These α coefficient values are sufficient to assert the inter-item reliability of each scale in capturing the underlying factors (Jackman 2008, 124-25).

To create our measures of *Responsiveness* and *Fairness*, we take the mean value of responses to the questions for each index, avoiding the problem of missing data encountered in creating an additive index. The correlation between the two ($r = 0.673$, $p < 0.001$) is high enough to indicate a likely set of similar factors, yet the correlation is not so large as to indicate the two indices are measuring the same underlying concept. We plot the distribution of respondents’ scores on our measures of *Fairness* and

Figure 1. Distribution of Fairness and Responsiveness Index Scores



Responsiveness in Figure 1. Both indices have a unimodal distribution with a left skew, indicating that respondents hold generally positive attitudes about the fairness and responsiveness of state and local court systems.

We also control for standard socioeconomic factors through ordinal measures of *Education*, *Income*, and *Age Cohort*. We employ dichotomous variables of *Female*, *Black*, and *Latino* to control for gender and race/ethnicity (see Appendix for detailed coding information). Based on factors identified in previous literature as significant ones affecting public attitudes about the judicial system, we used a series of dichotomous measures of involvement in the court system to control for and to examine the effects of having (or lacking) personal experience in the legal system on attitudes about the judiciary. These measures include: *Witness, Civil* (participated as a witness in a non-criminal trial in civil or chancery court in the last 12 months); *Witness, Criminal* (participated as a witness in a trial in a criminal case in the last 12 months); *Juror, Civil* (served as a juror in a non-criminal trial in civil or chancery court in the last 12 months); *Juror, Criminal* (served as a juror in a trial in a criminal case in the last 12 months); *Defendant, Civil* (was a non-criminal defendant in a trial in civil or chancery court in the last 12 months); *Defendant, Criminal* (was a defendant in a criminal court in the last 12 months); *Plaintiff* (filed a lawsuit in either civil or chancery court in the last 12 months); and *No Past Involvement* (has never had any personal involvement in any court). Finally, we also include a control for *State Corruption*, measured as federal public corruption convictions per

capita as compiled by the Corporate Crime Reporter (2002), based on the 2002 annual report to Congress of the Justice Department's Public Integrity Section.

If method of judicial selection has an effect on public trust in the judiciary, we expect to find that our treatment variables—*Appointive System*, *Nonpartisan Elections*, and *Partisan Elections*—retain statistical significance in affecting both of our index measures of public trust after controlling for major demographic, political, and socioeconomic factors and the effect of experience in the legal system. Based on a review of the literature, we expect to find that such an isolated and significant relationship exists; particularly given the rise of partisan judicial elections and the consequently widening gap in public perception between state courts which are elective and those that are appointive. Accordingly, we develop two hypotheses:

H₁: *We expect that voters are more likely to view courts as “fairer” institutions in systems that select judges through comparatively apolitical means (i.e., appointive over elective selection methods, nonpartisan over partisan selection methods.) Concomitantly, the public will also view courts as more “responsive” institutions as the means of selecting judges becomes more politicized (i.e., elective over appointive selection methods, partisan over nonpartisan selection methods).*

H₂: *We expect that this relationship will hold for both statewide and local courts, as the public accrues knowledge of both through different means: state supreme courts through greater visibility in the public eye through major rulings and substantial political campaigns for statewide judicial posts, and local trial courts as the predominant source of citizens' interaction with the judicial system.*

Results and Discussion

Table 1 reports the frequencies of judicial selection methods on the statewide and local levels. An initial examination shows a fairly even distribution of respondents across all of the various selection types. From this mix of selection types we should be able to draw reasonable conclusions about the impact of the selection process on voter opinion of the judiciary.

Initially, we examine the mean value of each index for each judicial selection method. For both indices, tests show subtle but important differences in terms of overall levels of support depending on the selection process. Tables 2 and 3 report the results of difference of means tests for each component of trust (*Fairness* and *Responsiveness*) across the three major

Table 1. Observed Frequencies of Judicial Selection Methods

Selection Method	% of Respondents: State Court of Last Resort	% of Respondents: Trial Courts of General Jurisdiction
Appointive	11.2% (175)	4.3% (63)
Missouri Plan	35.5% (556)	13.6% (198)
Nonpartisan Elections	21.7% (340)	38.6% (561)
Partisan Elections	31.7% (496)	43.5% (632)

N = 1567
N for each category placed in parentheses. Percentages may not total 100% due to rounding. Total responses for Intermediate Appellate Courts are lower due to the absence of such courts in 11 states and the District of Columbia. Responses from Arizona, Indiana, Kansas, and Missouri were excluded from the Trial Courts of General Jurisdiction category because of the hybrid nature of their intra-state means of selection, based on either geographic and/or tiered systems of division.

**Table 2. Mean Value of Fairness Index
by Respondents' Method of Judicial Selection**

Selection Method	State Court of Last Resort	Trial Courts of General Jurisdiction
Appointive or Merit Plan	3.07 (716)	3.14 (253)
Nonpartisan Elections	3.15 (337)	3.14 (554)
Partisan Elections	3.14 (486)	3.08 (621)
Total	3.11 (1539)	3.12 (1428)

N for each category placed in parentheses.

**Table 3. Mean Value of Responsiveness Index
by Respondents' Method of Judicial Selection**

Selection Method	State Court of Last Resort	Trial Courts of General Jurisdiction
Appointive or Merit Plan	2.62 (713)	2.69 (254)
Nonpartisan Elections	2.68 (333)	2.64 (549)
Partisan Elections	2.70 (486)	2.67 (614)
Total	2.66 (1526)	2.66 (1417)

N for each category placed in parentheses.

judicial selection types for both state courts of last resort and trial courts of general jurisdiction.

In comparing the means of our index measures of *Fairness* and *Responsiveness* across methods of judicial selection at the state and local level, we do not find substantial differences in public trust at either level, which in itself is a finding of note. The data do not support concerns that states' judicial elections exert a uniform effect of tarnishing images of impartiality and fairness held by citizens. Indeed, judicial elections appear to *enhance* those perceptions for state courts of last resort. The *Fairness* index for partisan and nonpartisan electoral systems for state courts of last resort is *higher* than that for the appointment and Merit Plan methods of judicial selection. As for local trial courts, *Fairness* index scores are higher in states which use appointive systems of judicial selection than for those which employ partisan elections, although there is no difference in the *Fairness* indices between appointive methods and nonpartisan elections for trial courts of general jurisdiction. Thus, respondents in states which select state supreme court justices through partisan or nonpartisan elections rate the judicial system as fairer than those in states which utilize nonpartisan elections; while the *Fairness* index is higher in states which use non-partisan elections and appointive systems to fill the benches of local trial courts than those which elect local judges through partisan elections. For many observers of the courts and their interactions with the public, this may be a somewhat surprising result. However, for both state and local courts, respondents may very well equate accountability with fairness, thus assuming the accountability mechanism of popular elections leads to judicial fairness. Indeed, non-partisan elections may harness the best of both worlds by introducing a measure of accountability without the polarizing effects of explicitly partisan judicial campaigns.

As for the other measure of trust, *Responsiveness*, while respondents in states which elect judges for their state courts of last resort (particularly through partisan elections) view courts as more responsive, the relationship between method of judicial selection for local trial courts and public attitudes about judicial responsiveness is in an unexpected direction: respondents in states which select judges for trial courts of general jurisdiction through appointment and Merit Plan systems view courts as more responsive than do those in states that utilize partisan and nonpartisan elections. Though the difference is small, the finding that the implementation of elections to select judges under the contention that citizens will view the courts as more responsive to public opinion may not be the case, particularly based on selection method for local courts. The incongruence of *Responsiveness* index scores between selection methods at the state and local levels may be the result of the increase in the scope of campaign activities in many state Supreme Court races relative to elections for local judges, thus creating a greater image in the minds of the public of the courts as responsive institutions.

These descriptive data provide a number of important implications about the relationship between systems of judicial selection and public trust in the courts. A multiple regression allows us to control for alternative explanations and hypotheses and to isolate the effects of rival judicial selection methods. Thus, we next employ ordinary least squares (OLS) regression analyses in which we control for other factors in addition to selection process. Through this analysis we examine the impact of selection process independent of alternative explanations that others have previously found to impact respondent trust in the judiciary. Tables 4-7 report the results of our models, with Table 4 examining the determinants of *Fairness* for state courts of last resort; Table 5 examining the determinants of *Responsiveness* for state courts of last resort; Table 6 examining the determinants of *Fairness*

Table 4. Determinants of Public Evaluations of “Fairness” for State Courts of Last Resort

Variable	Appointive System as Omitted Method		Nonpartisan Elections as Omitted Method	
	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Appointive System	—	—	-0.12*	0.06
Nonpartisan Elections	0.12*	0.06	—	—
Partisan Elections	0.11**	0.04	-0.01	0.07
Female	-0.06**	0.03		
Black	-0.45***	0.04		
Latino	-0.16***	0.05		
Education	0.04***	0.01		
Income	-0.02***	0.01		
Age Cohort	-0.03*	0.02		
State Government				
Corruption Rate	-0.02	0.02		
Court Involvement:				
Witness, Civil	-0.32*	0.17		
Witness, Criminal	0.04	0.09		
Juror, Civil	0.29***	0.10		
Juror, Criminal	0.07	0.07		
Defendant, Civil	-0.36***	0.11		
Defendant, Criminal	-0.30***	0.08		
Plaintiff	-0.13	0.09		
No Past Involvement	0.08*	0.05		
Constant	3.36***	0.10		
N	1300			
R ²	.13			

Robust standard errors of OLS regression coefficients clustered by state.
*p ≤ .10; **p ≤ .05; ***p ≤ .01 (two-tailed tests).

for trial courts of general jurisdiction; and Table 7 examining the determinants of *Responsiveness* for trial courts of general jurisdiction. In each model, we include our three dichotomous measures of our treatment variable: selection method. We first omit *Appointive System* as the reference category, which allows us to compare the marginal effects of *Nonpartisan Elections* and *Partisan Elections* relative to judicial systems that utilize appointive or Merit Plan methods. To the right of these treatment variables in each table, we report the results of running an identical model with *Nonpartisan Elections* substituted as the omitted reference category. This permits us to examine the marginal effects of *Partisan Elections* relative to those of *Nonpartisan Elections*.

Table 5. Determinants of Public Evaluations of “Responsiveness” for State Courts of Last Resort

Variable	Appointive System as Omitted Method		Nonpartisan Elections as Omitted Method	
	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Appointive System	—	—	-0.10	0.08
Nonpartisan Elections	0.10	0.08	—	—
Partisan Elections	0.05	0.06	-0.05	0.09
Female	-0.01	0.04		
Black	-0.34***	0.05		
Latino	0.04	0.04		
Education	0.01	0.02		
Income	-0.02**	0.01		
Age Cohort	0.02	0.02		
State Government				
Corruption Rate	-0.01	0.02		
Court Involvement:				
Witness, Civil	-0.09	0.18		
Witness, Criminal	-0.14	0.11		
Juror, Civil	0.04	0.11		
Juror, Criminal	0.07	0.09		
Defendant, Civil	-0.47***	0.15		
Defendant, Criminal	-0.36***	0.08		
Plaintiff	-0.19*	0.10		
No Past Involvement	0.09	0.06		
Constant	2.79***	0.12		
N	1291			
R ²	.09			

Robust standard errors of OLS regression coefficients clustered by state.

*p ≤ .10; **p ≤ .05; ***p ≤ .01 (two-tailed tests).

Although not that low compared to the typical fit statistics generated by survey data, the R^2 statistics indicate that neither model performs very well in explaining our two components of trust, fairness and responsiveness. However, factors identified by previous literature to be robust explanations of public attitudes about the courts remain significant in our models. In all of our models, African Americans evaluate the judicial system as substantially less fair and less responsive. Both Latinos and, surprisingly, women rate the judicial system as less fair, though not less responsive. *Education* is positively related to *Fairness* but does not emerge as a robust determinant of attitudes about the responsiveness of the judicial system. *Income* is a significant but insubstantial negative factor in both measures of public trust in the courts. In our model of state courts of last resort, we find a significant and

**Table 6. Determinants of Public Evaluations of “Fairness”
for Trial Courts of General Jurisdiction**

Variable	Appointive System as Omitted Method		Nonpartisan Elections as Omitted Method	
	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Appointive System	—	—	-0.08	0.06
Nonpartisan Elections	0.10*	0.05	—	—
Partisan Elections	0.08	0.05	-0.01	0.05
Female	-0.07**	0.03		
Black	-0.45***	0.04		
Latino	-0.17***	0.04		
Education	0.04***	0.01		
Income	-0.02***	0.01		
Age Cohort	-0.03	0.02		
State Government				
Corruption Rate	-0.03	0.02		
Court Involvement:				
Witness, Civil	-0.33*	0.17		
Witness, Criminal	0.05	0.09		
Juror, Civil	0.29***	0.10		
Juror, Criminal	0.06	0.07		
Defendant, Civil	-0.36***	0.12		
Defendant, Criminal	-0.30***	0.08		
Plaintiff	-0.12	0.09		
No Past Involvement	0.08*	0.05		
Constant	3.38***	0.10		
N	1300			
R ²	.13			

Robust standard errors of OLS regression coefficients clustered by state.

* $p \leq .10$; ** $p \leq .05$; *** $p \leq .01$ (two-tailed tests).

negative relationship between *Age Cohort* and *Fairness*. Finally, *State Government Corruption Rate* is an insignificant determinant of *Fairness* and *Responsiveness* index scores across all models.

As past literature indicates, interaction with the courts can matter a great deal in shaping public evaluations of the judicial system. Being a defendant in a criminal or civil case has, not surprisingly, a large and negative effect on public trust in the courts. Similarly, evaluations of judicial responsiveness are depressed for those serving as plaintiffs, which is a negative factor in both *Responsiveness* models. Serving as a witness or juror in a criminal case is an insignificant factor in all of our models. Though being a witness in a civil case deflates evaluations of the fairness of the judicial system, serving as a juror in a civil case is positively related to *Fairness*.

Table 7. Determinants of Public Evaluations of “Responsiveness” for Trial Courts of General Jurisdiction

Variable	Appointive System as Omitted Method		Nonpartisan Elections as Omitted Method	
	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Appointive System	—	—	0.03	0.07
Nonpartisan Elections	-0.05	0.07	—	—
Partisan Elections	-0.05	0.07	-0.01	0.07
Female	-0.01	0.04		
Black	-0.34***	0.06		
Latino	0.03	0.03		
Education	0.01	0.02		
Income	-0.02**	0.01		
Age Cohort	0.01	0.03		
State Government Corruption Rate	0.01	0.03		
Court Involvement:				
Witness, Civil	-0.10	0.18		
Witness, Criminal	-0.13	0.11		
Juror, Civil	0.04	0.11		
Juror, Criminal	0.06	0.09		
Defendant, Civil	-0.47***	0.15		
Defendant, Criminal	-0.36***	0.08		
Plaintiff	-0.19*	0.10		
No Past Involvement	0.09	0.06		
Constant	2.86***	0.11		
N	1291			
R ²	.09			

Robust standard errors of OLS regression coefficients clustered by state.

*p ≤ .10; **p ≤ .05; ***p ≤ .01 (two-tailed tests).

Finally, those who have no past interaction with the courts do not differ in their evaluations of the responsiveness of courts, but do view the judicial system as fairer. This finding offers a faint suggestion that citizens may have higher expectations of the judiciary from the outside and that personal interaction with courts generally diminishes evaluations of judicial fairness and responsiveness. This is an implication that, of course, will require additional research to test.

Controlling for all of the previously discussed factors, we find evidence that state and local methods of judicial selection are robust shapers of the public's evaluations about the fairness of the judicial system. However, we find that judicial selection methods are statistically insignificant determinants of *Responsiveness* at either the state or local level (Tables 5 and 7). Relative to Merit Plan or appointive systems of judicial selection, the utilization of non-partisan and partisan elections for state supreme courts are positively related to *Fairness* index scores (Table 4). For state courts, the effects of partisan and non-partisan elections on *Fairness* are statistically distinguishable from those of appointive selection methods. However, only the selection method of non-partisan elections is a robust (and positive) determinant of public evaluations of judicial fairness for local trial courts (Table 6). The magnitude of the effects of judicial selection method on public trust in the courts is generally small. When such effects achieve significance, they remain (for example) only about $\frac{1}{4}$ as influential as the effect of race (*Black*) on our measure of *Fairness*.

While these results do not provide support for our first hypothesis—that elective systems engender greater feelings of judicial responsiveness but lessen popular ratings of judicial fairness—neither do they indicate otherwise. Rather, the method of judicial selection does not seem to play a major role in affecting either measure of public trust—*Responsiveness* or *Fairness*—at either the state or local level. Our results do generate an important nuance, however: it seems that electoral methods of judicial selection (particularly non-partisan elections) create greater levels of public trust in the judicial system. One finds support for this assertion in Tables 4 and 6, where selection method for state supreme courts is a robustly positive factor on public evaluations of judicial “fairness” in elective over appointive systems. Our finding that partisan and nonpartisan elections are more effective than appointive systems in raising our *Fairness* measure—while initially surprising—is in line with the argument made by Bonneau and Hall (2009) in that the accountability produced by judicial elections outweighs the perceived costs engendered by electoral means of filling the benches of state and local courts.

Conclusion and Future Directions

In comparing this relationship between state and local courts, we find that the positive linkages existing between selection method and public trust support the contention that judicial elections boost, rather than deflate, public trust in the courts. The lack of statistical significance for rival methods of judicial selection on the perceived responsiveness of courts is itself an important finding. It indicates that the debate over judicial elections may be exaggerated if such elective systems neither provide the benefit of engendering greater public feelings of judicial responsiveness nor diminish popular evaluations of the fairness of the judiciary. Thus, these findings suggest that normative debates between the values of judicial accountability and independence would be better informed by the consideration that—among the influences of public trust of the courts—the means of judicial selection is a relatively insubstantial factor.

This is clearly an area fertile for continuing research. While there are dozens, if not hundreds, of surveys that ask questions regarding trust and support for the institutions of the executive and legislative branch, the dearth of data on the public opinion of the judiciary is both striking and frustrating. The limited amount of available data at the state and—particularly—local levels of the judicial system evidences the need for a better understanding of how citizens interact with the judiciary and their views of it. This article's findings provide but a first step in a process that has the potential to greatly assist citizens as they weigh the consequences of different methods of judicial selection and their role in choosing those who sit as arbiters of the law at all levels in their respective states.

APPENDIX

Variables	Question Wording and Coding
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VARIABLE MEASUREMENT (Dependent Variables)

Fairness Index

(Mean of all valid responses to following questions):

Component 1 "The courts make decisions based on the facts": Strongly agree = 4; Somewhat agree = 3; Somewhat disagree = 2; Strongly disagree = 1

Component 2 "Judges are honest in their case decisions": Strongly agree = 4; Somewhat agree = 3; Somewhat disagree = 2; Strongly disagree = 1

... *Appendix continues*

APPENDIX (continued)

Variables	Question Wording and Coding
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VARIABLE MEASUREMENT (Dependent Variables) (continued)

- Component 3 “How often do you think people receive fair outcomes when they deal with the courts?” Always = 5; Usually = 4; Sometimes = 3; Seldom = 2; Never = 1
- Component 4 “How often do you think the courts use fair procedures in handling cases?” Always = 5; Usually = 4; Sometimes = 3; Seldom = 2; Never = 1

Responsiveness Index

(Mean of all valid responses to following questions):

- Component 1 “Courts take the needs of people into account”: Strongly agree = 4; Somewhat agree = 3; Somewhat disagree = 2; Strongly disagree = 1
- Component 2 “Courts listen carefully to what people have to say”: Strongly agree = 4; Somewhat agree = 3; Somewhat disagree = 2; Strongly disagree = 1
- Component 3 “Courts are sensitive to the concerns of the average citizen”: Strongly agree = 4; Somewhat agree = 3; Somewhat disagree = 2; Strongly disagree = 1

VARIABLE MEASUREMENT (Independent Variables)

State Court of Last Resort

- Appointive System Binary measure: Appointive/Merit Plan system = 1 (States = 2, 4, 8, 9, 10, 11, 12, 15, 18, 19, 20, 24, 25, 29, 31, 35, 36, 40, 44, 45, 46, 47, 49, 50, 56); All other states = 0
- Nonpartisan Elections Binary measure: Nonpartisan electoral system = 1 (States = 13, 16, 21, 26, 27, 28, 30, 32, 38, 39, 41, 53, 55); All other states = 0
- Partisan Elections Binary measure: Partisan electoral system = 1 (States= 1, 5, 17, 22, 37, 42, 48, 54); All other states = 0

General Trial Courts

- Appointive System Binary measure: Appointive/Merit Plan system = 1 (States = 2, 8, 9, 10, 11, 15, 19, 24, 25, 31, 35, 44, 45, 49, 50, 56, 23, 33, 34, 51); All other states = 0
- Nonpartisan Elections Binary measure: Nonpartisan electoral system = 1 (States = 6, 12, 13, 16, 21, 26, 27, 28, 30, 32, 38, 39, 40, 41, 46, 53, 55); All other states = 0
- Partisan Elections Binary measure: Partisan electoral system = 1 (States = 1, 5, 17, 22, 36, 37, 42, 47, 48, 54); All other states = 0

APPENDIX (continued)

Variables	Question Wording and Coding
VARIABLE MEASUREMENT (Independent Variables) (continued)	
Female	Binary measure: Female = 1; Male = 0
Black	Binary measure: African-American = 1; All else = 0
Latino	Binary measure: White Hispanic/Latino/Latina=1; All else = 0
Education	Highest level of education completed: Less than high school = 1; High school diploma = 2; Some college, technical training school, or Associate's degree = 3; Bachelor's degree = 4; Some graduate school = 5; Graduate or professional degree = 6
Income	Combined household income: Less than 10k = 1; 10k to 20k = 2; 20k to 30k = 3; 30k to 40k = 4; 40k to 50k = 5; 50k to 60k = 6; 60k to 70k = 7; 70k to 80k = 8; 80k to 120k = 9; More than 120k = 10
Age cohort	18 – 29 = 1; 30 – 49 = 2; 50 – 64 = 3; 65 or older = 4

State Government

Corruption Rate	Each state's corruption rate is the per capita rate of federal public corruption convictions in each state between 1993 and 2002 (based on data compiled by the Department of Justice's Public Integrity Section). The highest corruption rate was 7.48 (Mississippi) and the lowest was 0.52 (Nebraska). The corruption rate for the District of Columbia (79.33) was excluded from our analysis because we agree with the Corporate Crime Reporter's (the data provider) contention that this figure is inflated because D.C. "is the seat of the federal government, and because of this, there are more criminal prosecutions for public corruption than anywhere else in the country" (CCR, p. 8)
Court Involvement	<p>INVOLV: "Have you or a member of your household had any personal involvement in the courts in the last 12 months as the plaintiff-the person who brought the lawsuit, a defendant-the one being sued or charged, serving as a member of a jury, being a witness in court, or something else?": Yes, I have = 1; Yes, a member of my household has = 2; No, but have had personal involvement at some point in my life = 3; No, never had any personal involvement = 4</p> <p>WEREYOU: "In this case were you": The defendant in a criminal case = 1; The person being sued = 2; The person filing the lawsuit = 3; A juror = 4; A witness = 5</p> <p>WASCASE: "Was the case a": lawsuit seeking money = 1; family matter = 2; criminal matter [including juvenile offenses] = 3</p>

... *Appendix continues*

APPENDIX (continued)

Variables	Question Wording and Coding
VARIABLE MEASUREMENT (Independent Variables) (continued)	
Witness, Civil	Binary measure: Civil witness = 1 (INVOLV = 1, WEREYOU = 5, WASCASE = 1, 2, or 4); All else = 0
Witness, Criminal	Binary measure: Criminal witness = 1 (INVOLV = 1, WERE YOU = 5, WASCASE = 3); All else = 0
Juror, Civil	Binary measure: Civil juror = 1 (INVOLV = 1, WEREYOU = 4, WASCASE = 1, 2, or 4); All else = 0
Juror, Criminal	Binary measure: Criminal juror = 1 (INVOLV = 1, WERE YOU = 4, WASCASE = 3); All else = 0
Defendant, Civil	Binary measure: Civil defendant = 1 (INVOLV = 1, WEREYOU = 2); All else = 0
Defendant, Criminal	Binary measure: Criminal defendant = 1 (INVOLV = 1, WEREYOU = 1); All else = 0
Plaintiff	Binary measure: Plaintiff = 1 (INVOLV = 1, WEREYOU = 3); All else = 0
No Past Involvement	Binary measure: No past involvement =1 (INVOLV = 4); All else = 0

NOTES

¹Dougherty et al. (2006) concur that African Americans are more likely to distrust state courts, but also contend that Latinos are also less likely to trust their state judiciaries. They also find that higher levels of knowledge about and personal experience with their state and local judicial systems are associated with higher levels in public trust in state judiciaries.

²The study covered only Washington and Oregon and a period when most judicial elections were noncompetitive. Nonetheless, this finding does support the work of Wenzel et al. (2003).

³The American Bar Association’s 2000 data also includes judicial selection methods utilized for the intermediate appellate courts in each state. However, the selection method used at this level so closely mirrors the method used for the state court of last resort that its inclusion as a separate set of models would not provide any additive explanatory value to this analysis.

⁴Though variants of the Missouri Plan include retention elections, we choose to include only those systems which include elections as a means of selection *and* retention, since such selection methods provide a far greater degree of public input, especially given the high rate at which appointive justices are “re-elective” through retention elections: in

6,306 such elections between 1964 and 2006, a total of only 56 judges were not retained (Aspin 2007).

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