

Circuit Court Legitimacy: Thoughts Toward a Theory

Sara C. Benesh, University of Wisconsin – Milwaukee

Nancy Scherer, Wellesley College

Amy L. Steigerwalt, Georgia State University

Introduction

Political institutions must have some level of public support in order to operate effectively, and this is especially true in a democratic regime (Baum 2003; Carp & Stidham 2001, 2004; Franklin & Kosaki 1995; Marshall 1989). The courts are especially dependent upon the public viewing their actions as legitimate, as they are unelected and thereby unaccountable to the public through democratic mechanisms. As Caldeira and Gibson explain in reference to the U.S. Supreme Court, “The Court lacks an electoral connection to provide legitimacy, is sometimes obliged to stand against the winds of public opinion, operates in an environment often intolerant of those in need of defense and has none of the standard political levers over people and institutions” (1992: 635). Courts therefore rely upon the public viewing their actions as legitimate in order to hand down decisions and obtain compliance with them (Gibson, Caldeira & Spence 2005). This support becomes even more important when a case concerns a potentially controversial issue: courts need the public to see their decisions as legitimate so they can hand down divisive decisions without fear of a public backlash. “Institutions with adequate legitimacy find that their decisions, even their unpopular decisions, are accepted by their constituency and consequently that compliance is more likely (Caldeira

and Gibson 1995, 357). American courts thus rely upon public support to be able to function properly.

In addition, the United States is said to be governed by the rule of law, such that all are equal before the law, that law is above men (Ingram 1985), and that judges are charged with both applying the rule of law and defending it. The courts' need for public support thus grows when we recognize that, in order for the rule of law to function properly in America, citizens must have confidence in the institution designed to protect it (Nardin 2001). For, if this confidence lessens, citizens may not utilize the legal system (Roberts & Stalans 1997) or comply with its rulings (Murphy & Tanenhaus 1968; Tyler 1990; Tyler & Rasinski 1991). We therefore need to understand the degree to which the public has confidence in the courts and views their actions and decisions as legitimate.

Legitimacy of Courts

Scholars of attitudes toward the U.S. Supreme Court have found that, while many variables influence support for the Supreme Court,¹ the best explanatory value for the distinction among the branches of government with respect to legitimacy is knowledge and exposure to the symbols of the judiciary (Gibson and Caldeira 2009). This theory, dubbed "positivity bias" by Gibson and Caldeira, submits that those who know more about the Supreme Court are more frequently exposed to the symbols of judicial legitimacy and hence, support the Court at higher levels. Interestingly, this same exposure hypothesis performs oppositely for

¹ Studies have shown that knowledge of the Supreme Court (Caldeira and Gibson 1992; Gibson, Caldeira and Baird 1998), attention to the Supreme Court (Caldeira 1986; Caldeira and Gibson 1992), commitment to democratic values (Caldeira and Gibson 1992), education (Handberg and Maddox 1982; Caldeira and Gibson 1992), 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 Supreme Court. A person's party affiliation, ideology, and race, among others, have also been shown to impact levels of legitimacy for the Court (Kessel 1966; Dolbeare and Hammond 1968).

Congress; the more one knows about Congress, the less confidence one has in the institution, possibly due to exposure to the messier aspects of democracy at work (Hibbing and Theiss-Morse 1995, 2002). These positive evaluations of the Court, once made, tend to be enduring, resisting the effects of policy fluctuations (Kessel 1966; Tanenhaus and Murphy 1981; Handberg 1984; Hibbing and Theiss-Morse 1995), though some scholars are beginning to countenance the potentiality that the “reservoir of good will” the public holds for the Supreme Court could, someday, be depleted due to controversial actions by the Court (Gibson and Caldeira 2009, Burbank 2007).

We also know quite a bit about how trial courts enhance their legitimacy. Trial courts are thought to largely obtain legitimacy through procedural justice. The procedural justice theory, which emanates from the social psychology literature, argues that citizens are more likely to be satisfied with the resolution of their legal dispute if they felt the proceeding itself was fair, even if the actual ruling was not in their favor (Thibaut & Walker 1975). Tom Tyler, along with his colleagues, built upon this theory in a number of studies, by asking whether views of procedural fairness in turn influence one’s perception of the legal system itself (see e.g., Casper, Tyler & Fisher 1988; Tyler 1984, 1988, 1994; Tyler & Lind 1990; Tyler & Rasinski 1991), finding, overall, that judicial institutions are viewed as “legitimate” when citizens believe they follow fair procedures (see also Baird 2001; Fossati & Meeker 1997; O’Barr & Conley 1988). For example, those who felt they were treated with respect and were able to present their side of the case, were more likely to have positive feelings toward legal institutions in general than those who felt the legal procedures were unfair. Again, this finding holds true even if the citizen did not receive a favorable outcome. While some scholars argue legitimacy

does not necessarily affect compliance (see e.g., Gibson 1989, 1991; Mondak 1993), studies of public confidence in state courts do find a link between high levels of institutional loyalty and a belief that the state courts operate in a “fair” manner (see e.g., Benesh 2006; Wenzel, Bowler & Lanoue 2003). Judges think this to be true as well. All of the federal district court judges interviewed by Scherer (2010, 48)² acknowledged the importance of fair procedures and the sense that litigants in their own courtrooms were influenced by perceptions of it. Some scholars of public opinion and the Supreme Court have argued that conceptions of procedural fairness rely upon knowledge of institutional procedures or direct experience, and given the general lack of knowledge and experience with the courts, and especially the Supreme Court, such conceptions cannot therefore drive the creation of diffuse support; instead, Gibson (1989) and Mondak (1993) argue people will view an institution’s procedures as fair if they support the institution itself. In addition, personal experience with courts and knowledge of them has been shown to directly affect levels of diffuse support, further complicating causality. Regardless, fairness of procedures and support are intertwined for lower courts.

While it is important to review what we know about support for the Supreme Court and trial courts, as we have above, the institutional legitimacy of the federal appellate courts, the U.S. Circuit Courts of Appeals, has never been examined. And, studies on the legitimacy of the other two levels of the federal hierarchy may be inapposite since the appellate courts have neither the visibility of the Supreme Court (Gibson et al 2010) nor the personal connections – with litigants, witnesses, jurors or other court participants – of the trial courts. We cannot,

² In July through October, 2009, Scherer interviewed 20 federal district court judges in three separate jurisdictions in the northeast. When asked how they promote trust and confidence in the judicial system within their own courtrooms, all of the judges explained that they treat court participants, including criminal and civil litigants, with “respect” and “dignity.”

therefore, assume they enjoy the high levels of legitimacy courts at other levels enjoy. This lack of knowledge about the legitimacy of the circuit courts takes on increased significance when we realize that, in over 99% of cases, the courts of appeals serve as courts of last resort for federal court litigation. Given the Supreme Court's discretionary and ever-shrinking docket, and the fact that each circuit's rulings bind not just a single litigant, but millions of citizens from multiple states, the circuit courts' role in the federal hierarchy becomes increasingly important.

That people obey and respect the rulings of the courts of appeals suggests that this institution enjoys some level of legitimacy, and there exists no widespread lack of compliance problem. In this article, we seek to do three things. First, we seek to establish the degree to which the U.S. Courts of Appeals are known by the public. Second, we seek to establish whether these circuit courts, like their Supreme Court and trial courts counterparts, are held in high esteem by the public, and whether we can reliably differentiate support for the circuit courts from support for either the Supreme Court or the trial courts. Finally, using the information gained regarding knowledge levels and legitimacy, we put forward a theory of legitimacy acquisition for the U.S. Courts of Appeals.

The Knowledge Deficit

Before we are able to measure levels of circuit court legitimacy, and deduce from whence it derives, we must first determine whether or not people know anything of substance about these courts, and whether respondents can reference the U.S. Circuit Courts as opposed to merely reiterating its support for the Supreme Court or relying on its support for state courts when asked about support for the U.S. Courts of Appeals (the "lower federal courts" as we call

them in the survey and the experiment). Hence, we first seek to determine the level of information respondents possess. We do so via surveys and experiments.

One can certainly question the degree to which citizens are knowledgeable even about the U.S. Supreme Court, which is much more visible than the courts in which we are interested. For example, a 2006 Annenberg study found that 80% of respondents didn't know who the Chief Justice of the Supreme Court was (and an additional 10% answered incorrectly). Perhaps more famous was the survey conducted in 1989 which found that, while 54% of respondents knew that Judge Wapner was the judge of "The People's Court," fully 71% could not name any justice on the U.S. Supreme Court (Epstein et al., 1994, 609).

Gibson and Caldeira (2009), however, argue that the public actually knows far more than we give it credit for, but that the way we ask these questions results in the finding that the public knows little. They advocate using closed-ended questions rather than open-ended recall questions. In so doing, they find that people have significantly higher levels of information than previously understood. To wit, while only 7% of people in their experimental survey correctly answered the open-ended question, "who is the Chief Justice of the United States," fully 46.3% identified Roberts as Chief Justice from a list containing Roberts, Lewis F. Powell and Byron R. White (Gibson and Caldeira 2009, 7). Citing research on indicators of information, they argue that multiple choice questions are a much more reliable metric of knowledge about the Supreme Court than open-ended questions.

In order to measure knowledge of the U.S. Circuit Courts of Appeals, then, we emulate Gibson and Caldeira (2009), asking several multiple-choice questions about the lower federal courts, including questions about length of tenure, means of ascension to the bench, and basic

jurisdiction. We have spent some time studying how best to do so, however. In our pilot study, we use an experimental paragraph that provides half of the respondents with some basic information about the lower federal courts, while leaving the other half to merely answer the questions in accordance with their understanding of the lower federal courts in order to ascertain whether people begin the survey with any information at all. If responses are statistically different between the two groups, we might have some evidence that people at least need to be reminded of what the lower federal courts are before they are asked questions about their levels of support for them. The paragraph reads,

This is a survey about the lower federal courts of the United States. The U.S. federal courts are arranged in a triangle. The U.S. Supreme Court that sits in Washington is at the top, the U.S. Courts of Appeals in the middle, and the U.S. District Courts at the bottom. The Supreme Court and the U.S. Courts of Appeals are both appellate courts; that is, they hear appeals from people who lost their cases at trial. The U.S. District Courts are the federal trial courts; those accused of breaking federal laws have their trials there. All of these federal courts also interpret the U.S. constitution. These courts are not the ones you would go to to dispute a traffic ticket or to get a divorce – those would be state courts, not federal courts. All judges who serve on the federal courts are nominated by the President and then confirmed by the Senate, and they all serve for life terms. Both the U.S. Courts of Appeals and the U.S. District Courts are commonly referred to as the “lower federal courts.” In the next set of questions, we seek information about the lower federal courts, and not the Supreme Court that sits in Washington or the state courts present in each state.

Obviously, the knowledge questions (especially those concerning information provided in the knowledge paragraph) should be quite easy for those receiving the paragraph, but we ask them of them anyway in order to determine whether or not the introductory paragraph is necessary to an understanding of the subject of the survey and to gain some leverage over the question of the extent to which respondents hold independent information about courts.

In addition, we conducted a student experiment further manipulating the wording of the knowledge questions, focusing on advice given by Gibson and Caldeira (2009). In that experiment, we vary the grade level at which the questions are written as well as the specificity of the questions and answers. We report results from both projects and then draw conclusions from the overall portrait they paint regarding knowledge of the U.S. Courts of Appeals (lower federal courts).

The Pilot Study

The first vehicle we use to test knowledge (and later, legitimacy) is a national, random-digit-dial survey conducted via telephone by the Center for Urban Initiatives at the University of Wisconsin – Milwaukee between December 2008 and February 2009. A total of 210 people completed the survey; 103 respondents were read the knowledge paragraph (see above), and 107 were not. The second vehicle was an experiment on students in an introductory American government class at an urban university. A total of 375 students completed one of two versions of a knowledge and legitimacy survey, comparable to the pilot study survey, but focused on how best to word questions seeking levels of information about circuit courts.

Level of Information and the Information Experiment

Many assume (perhaps incorrectly, according to Gibson and Caldeira 2009) that people have minimal knowledge of the Supreme Court; might they have any knowledge of the lower federal courts? Let us first consider the national survey; Table 1 presents our findings. The public seems to be minimally informed about some aspects of the lower federal courts, and, for the most part, an introductory paragraph does not affect the degree to which they are able to correctly answer factual questions about them.

As seen in the table, more than a majority of both respondents read the paragraph and those not read the paragraph know that the Supreme Court has the final say on all legal claims, that the district courts are the trial courts in the federal system, and that federal courts hear violations of federal law. Additionally, a majority of those read the paragraph and nearly a majority of those not read the paragraph know that there are three levels of courts in the federal judiciary, though those read the paragraph were significantly more informed than those who were not.

Two questions exhibit a lack of knowledge of the lower federal courts that is somewhat troubling, however. Only 51% of those read the paragraph and 36% of those not read the paragraph know that federal judges are appointed for life (a difference, incidentally, that is statistically significant), and only 24% of respondents in both groups know that these judges are selected by the President with the advice and consent of the Senate, though that number climbs to 50% of those read the paragraph and 36% of those not read it when we also count “the President” alone as a correct choice (and the difference becomes nearly statistically significant, $p=0.056$).

This discussion, though, lumps those who answer incorrectly with those who assert that they do not know the answer to the question, and “don’t know” responses are substantively interesting here. Notice in the table that for all three questions in which there was at least some indication of a difference between respondents read the paragraph and those not read the paragraph, those not read the paragraph admit to a higher degree that they do not know the answer (though the difference only reaches statistical significance for the question on selection). Indeed, it seems as if the paragraph matters and that it informs, at least when it

comes to length of term, the number of levels in the federal judiciary, and method of selection of federal judges.

Turning to the experimental findings, consider Table 2. There we see more evidence for a knowledge deficit, especially with respect to what we would argue are essential questions about term length and selection of federal judges, two aspects that are seen by many to be essential to judicial independence. Those who lament the public's levels of knowledge about things political often fail to make a distinction between information that is really relevant to participation in democracy and information that may be something of a luxury. Lupia and McCubbins, though, take a more realistic bent, attempting to ascertain whether people with admittedly low levels of factual information might still make reasonable, informed decisions (1998). Indeed, they find that they do. So, while we are not worried about the fact that, for example, only about 26% of our student respondents can choose John Roberts, Jr. from a list as being the Chief Justice of the United States, the fact that fully 38% think federal judges are elected seems more problematic.³ While it may be that respondents are incorrectly conflating their state courts with the lower federal courts, we find evidence to mitigate that concern: 1) respondents in states that elect their courts are not any more likely to answer that the federal courts are selected via election than those from states that do not use judicial elections; and 2) 72% of respondents in our student experiment know that most criminal cases are considered by state courts and 80% correctly state that traffic courts are state courts.

³ Interestingly, respondents seem to have more information about their state courts. In a survey of the Greater Milwaukee Area, 63% answered correctly that, in Wisconsin, state judges are elected and that they hold office for a set number of years. In that same survey, 34% of respondents believed lower federal judges to be similarly elected and only 15% knew they serve for life. (Fully 47% answered "Don't Know" when asked about the length of a federal judge's term; 35% answered "Don't Know" when asked how they are selected.)

One could interpret these results in a number of ways, but two things are clear. First, there is a real knowledge deficit, both among the public and among students enrolled in an introductory American government class in an urban university, when it comes to the lower federal courts, and second, that this knowledge deficit is not universal and is more pronounced regarding some aspects of the federal court than others. Hence, we think the extant interest in the relationship between knowledge of the courts and diffuse support may work differently at the circuit level, and that diffuse support for a little-known institution may well be driven by a unique set of forces.

Support for the Circuits

In order to test the notion that knowledge plays a potentially different role in affecting support for the lower federal courts, we ask, again, both via national survey and student experiment, for perceptions of the courts using standard measures (see e.g., Caldeira and Gibson 1992; Gibson and Caldeira 1992; Gibson, Caldeira and Spence 2003). Because we deem it necessary to ascertain whether respondents can differentiate Supreme Court support from support for lower federal courts, and because we expect that support for the Supreme Court may matter to support for lower federal courts, we include the same battery of diffuse support questions in reference to the Supreme Court. The questions on diffuse support have been found to accurately capture the degree to which Americans support the Supreme Court as an institution, as opposed to capturing short-term reactions to specific decisions. Importantly, they do so by asking Americans whether they would support making drastic, fundamental changes to court procedures and powers or doing away with the institution altogether, rather than “mere tinkering with minor procedural aspects” (Caldeira and Gibson 1992, 639). Applying

these questions to both the lower federal courts and the U.S. Supreme Court will allow us to determine the degree to which Americans possess diffuse support for the lower courts that is distinct from its support for the Supreme Court, as well as allow Supreme Court diffuse support to compete in a model of lower court support with other variables, as detailed below.

It turns out, according to our nationally representative pilot survey, that people are pretty supportive of the lower federal courts. (See Table 3 for details.) For example, when asked “If the lower federal courts started making a lot of decisions that most people disagree with, it might be better to do away with the lower federal courts altogether,” only 8% agreed somewhat and 4% agreed strongly. Fully 44% strongly disagreed with the statement, and another 17% disagreed somewhat. The Supreme Court gets a bit more support, but levels are comparable. When asked the same question regarding the U.S. Supreme Court, nearly 60% strongly disagreed with another almost 15% disagreeing somewhat. Only 9% strongly agreed, and 5% somewhat agreed. Interestingly, more respondents answered neutrally when asked about the lower federal courts (26%) than when asked about the Supreme Court (11% answered neither agree nor disagree), further confirming the general lack of information about and attention paid to these lower federal courts demonstrated with the knowledge questions. Levels of support were similar in the student experiments. To wit, the students are fairly supportive of both levels of courts but are more supportive of the Supreme Court, though they deem the courts more political than the general sample (perhaps due to their status as students in a political science course?).

Given that the above section shows that respondents have at least some information about the lower federal courts (though it is lacking in some key aspects), we deem it prudent to

test whether or not that level of information influences support for the lower federal courts in any way, a relationship that has, as discussed above, found support in research on the Supreme Court of the U.S., High Courts in other countries, and the state and local courts in the U.S. In order to do so, we first construct an index of diffuse support, consisting of court-supportive answers to the questions discussed above and used in previous research to measure deeply-held support for courts, including questions about whether we ought to do away with these courts, whether we ought to limit their jurisdiction over controversial issues, whether they can be trusted to make the right decisions, whether they get too mixed up in politics, whether one should obey rulings even if one disagrees with it, and whether the Constitution ought be rewritten to reduce their powers. The scale's Cronbach's alpha is a respectable 0.517.

Do respondents with more knowledge of the courts hold them in higher esteem? In order to answer this question, we turn first to simple correlations, finding scant support for the idea that information about the lower federal courts (as measured by the number of correct answers to our knowledge questions) is related at all to the scale of diffuse support just discussed. Indeed, the correlation between the two is only 0.189, though it is statistically significant ($p=0.008$). As noted in previous research, though, the correlation between level of support for the U.S. Supreme Court and knowledge about the federal courts is more substantial and is also significant ($r=0.351$, $p=0.000$). Is this result driven by a true distinction in the way support for lower federal courts work? Or is it an artifact of a lack of opinion when it comes to lower federal courts?

In part to answer the latter question and also in attempts to ascertain the extent to which respondents differentiate between the Supreme Court and the lower federal courts in

terms of diffuse support, we look to the relationship between support for the two courts. Diffuse support for the lower federal courts and diffuse support for the Supreme Court are indeed related, though they are not perfectly related. The Pearson correlation between the two is 0.492, which is significant at $p=0.000$, suggesting that one influences the other, but not that they are exactly the same.

Analyzing bivariate relationships only gets us so far, however, so we also estimate a multivariate regression model in order to determine whether support for the Supreme Court out-performs other argued influences on diffuse support for the lower federal courts. Using our scale of support for the lower courts as the dependent variable, we estimate a model of support, seeking to understand the various influences on support for lower federal courts. Table 4 shows two estimations of that model, one including a measure of religion, the other excluding that measure. There are a few things of note. First, knowledge is not significant in either specification, and support for the U.S. Supreme Court is always the largest influence on lower court support (e.g., its standardized coefficient is the largest). In addition, born-again Christians are much less supportive of the lower federal courts than those who do not consider themselves to be such.⁴

In order to determine whether our findings on the lower federal courts differ from findings on the Supreme Court, we also estimate a model of Supreme Court support. The literature on support for the Court has consistently found knowledge to be a significant and positive influence and has also found things like education, race, and gender to matter. As

⁴ Though not presented here, models on the student experiment data produce very similar results, though we are not able to include religion, ideology or level of education, both because we did not ask students these questions and, in the case of education, there would be little variation among these respondents.

shown in Table 5, our data produces similar results. We again run two models, one including a dummy variable indicating whether the respondent considers herself a Born-Again Christian, and one without such variable. In both models, increases in levels of knowledge and formal education significantly and positively influence diffuse support for the Supreme Court. While we do not find an effect for respondent's race or gender, both are correctly signed. Support for lower courts matters as well, though religiosity does not.

Hence, our findings on the Supreme Court are quite comparable to the findings others have published on the Supreme Court. But, when we compare our lower court model to the Supreme Court model, we find that there are distinctions between the variables influencing diffuse support for the lower federal courts versus the Supreme Court. Given these differences, further research is necessary to fully comprehend what drives confidence in the federal lower courts

Sources of Courts of Appeals Legitimacy

To know the Court is to love it, according to Gibson and his colleagues. So, what if you know very little about the court, but still love it, as we suggest our findings above demonstrate? From what source is the legitimacy of the U.S. Courts of Appeals derived if not via some sort of positivity bias or embrace of court mythology (Gibson et al 2010)? We advance a set of theories and hypotheses we believe will ultimately allow us to devise a national survey to aid in resolving our research question. These theories of legitimacy acquisition are based on theories prevalent in other areas of political science, psychology, and law, including cue or schema theory, principal-agent theory, procedural justice theory, theories of the effect of media on public attitudes, and theories that link information about institutions with approval or

disapproval. Understanding how the courts of appeals acquire political legitimacy has broad implications, for it sheds light on how other little-known political institutions acquire legitimacy as well.

Theories of Legitimacy Acquisition

Knowledge Theory

As Gibson and Caldeira have long argued (Caldeira and Gibson 1992; Gibson and Caldeira 2009; Gibson, Caldeira and Spence 2003; Gibson, Caldeira and Baird 1998), people with knowledge of the Court are more exposed to the symbols that help legitimate it and hence, are more supportive of the institution (Gibson, Lodge, Tabor and Woodson, 2010). Numerous studies have found that those who are more knowledgeable about certain institutions are also more socialized into the dominant cultural norms and so have greater support for these institutions (Adamany & Grossman 1983; Caldeira & Gibson 1992; Gibson, Caldeira & Baird 1998; Murphy & Tanenhaus 1970; Murphy, Tanenhaus & Kastner 1973). Importantly, studies of public opinion and state courts find a direct connection between one's knowledge of the courts and/or whether one has personal experience with the courts and one's opinion of their state courts (see e.g., Benesh 2006; Benesh & Howell 2001; Wenzel, Bowler & Lanoue 2003).

Might similar knowledge about the appellate courts also help legitimate the institution? As noted above, our preliminary findings suggest a knowledge deficit. Notwithstanding this lack of knowledge, however, our pilot studies also suggest people afford these courts quite a bit of legitimacy, though levels do not completely reach levels of legitimacy

respondents attribute to the U.S. Supreme Court.⁵ Apparently, one need not know the lower federal courts to like them quite a bit. Hence, the preliminary findings undermine the notion that knowledge is the primary source of institutional legitimacy for the appellate courts. We plan to collect more data to further test this theory, operationalizing our knowledge variable through a series of multiple choice questions, and refining those measures based on the analyses of them reported above, which focus on what a citizen would need to know to ably perform his or her duties as a citizen, recognizing reasonable cognitive limitations of survey respondents (Lupia and McCubbins 1998).

Expectations Theory

The second theory of legitimacy acquisition is based on a combination of principal-agent theory and the view of the judiciary we assume the public holds. Considering the tri-level hierarchy of the federal courts, the general expectation (among judges, scholars, journalists, and, we assume, the public) is that the appellate courts follow Supreme Court precedent. Given the high regard in which the public holds the Supreme Court, circuit court legitimacy may be derived from public perceptions that the circuits are faithful “agents” of the U.S. Supreme Court; e.g., that they perform as the public expects them to perform. Hence, expectations theory asserts that the public will reward the circuit courts with legitimacy when those courts perform the role they are supposed to play; that of an inferior, compliant court.

In research on other similarly hierarchical organizations, scholars have found an agent’s legitimacy to turn on whether people have confidence and trust that the agent is following the

⁵Table 3 shows the results from the full battery of legitimacy questions, which we adapted from Gibson, Caldeira and Spence 2003.

preferences of the principal, rather than “shirking” (i.e., pursuing his personal preferences). Thus, an agent carrying out the preferences of the principal is said to have more legitimacy than those agents with preferences in conflict with the principal (Docherty and Campbell 2006). Moreover, when the principal provides a clear set of guidelines concerning its desired outcome or the rules by which the agent may exercise discretion to achieve that outcome, the agent’s legitimacy is on weak footing when he disregards the principal’s clearly stated preferences.

Analogizing these principal-agent rules to the context of the federal court hierarchy, we theorize that the Supreme Court has a publicly-known and understood median ideology, which suggests a set of preferences held by the principal.⁶ Moreover, Supreme Court precedent serves as a set of written rules about how lower courts should exercise their discretion to carry out the Court’s preference.⁷ Thus, those circuits that are furthest away on the ideological spectrum from the Supreme Court are more likely to ignore the preferences of the principal or to be viewed as out-of-step (and to exercise discretion in a manner displeasing to the principal), thus undermining those circuits’ legitimacy. And, those circuits who lie furthest away on the ideological spectrum from the Supreme Court are also those most likely to have their rulings (or their exercises of discretion) overturned,⁸ theoretically leading to lower levels of legitimacy than the circuits least overturned by the Supreme Court.

⁶ Of course, the Pew Center recently released data that shows that the American public underestimates the conservatism of the Roberts Court. (See, <http://pewresearch.org/pubs/1688/supreme-court-lack-of-public-knowledge-favorability>.)

⁷ Though, of course, not all precedents are created equally with regard to extent to which they serve as clear guides for lower court action. See Corley 2009 for a discussion of plurality opinions, in that regard.

⁸ See Cameron, Segal and Songer 2000 for a formal and empirical demonstration of the Court’s propensity to more carefully monitor circuits with whom they are ideologically distant.

We have also considered how to operationalize each court's median ideology (so as to place each court on the ideological continuum) and their reversal rates. Keeping in mind the general public's lack of knowledge about the courts of appeals, we plan to measure an appeals court's ideological distance from the Supreme Court in two ways. First, we want actual distances between the Court and each circuit. We plan to use the Judicial Common Space scores to locate each circuit's median and the Supreme Court median, take the distance between the two, and then designate a circuit as being "distant" if the circuit is 1 standard deviation below the mean of all distance scores or 1 standard deviation above the mean of all distance scores. Distance denotes noncompliance, and so we expect more distant circuits to attain lower legitimacy scores than circuits that are closer to the Supreme Court's ideal point.

Measuring reversal rates is more straight-forward, and we follow the same rubric as we do in measuring ideological distance. Considering over-all reversal rate for each circuit in the year prior to the year in which we survey the public, we designate those circuits who are greater than 1 standard deviation above the mean of all reversal rates to be "distant" and hence more likely to be singled-out as not conforming to their expected role.

In addition, we will solicit the respondent's placement of the Supreme Court and his/her circuit on an ideological scale and use the distance between them, as well as seek the respondent's perception as to how often his/her circuit was overturned in the year preceding the current year, given that we know the public sometimes holds views that are not consistent with reality.⁹ This gives us a factually-based measure and a perceptions-based measure of

⁹ This is particularly true with respect to the Ninth Circuit, which has a somewhat undeserved reputation for being overly liberal and often reversed (see, e.g., Wermeil 2006, Wasby 2005). Surveys also demonstrate the disconnect between facts and respondent perceptions. See, for example, the question cited in Note 6 on the conservatism of

agency compliance. Finally, we will test our assumption regarding expectations of circuit compliance via a question to that end.

Systemic Support Theory

The third theory that aids us in determining how the appellate courts might acquire legitimacy given their low visibility is “systemic support theory,” which posits that evaluations of the judicial system writ large will drive evaluations of the individual circuit courts. This can happen both in a top-down manner and in a bottom-up manner. We argue that this theory is reminiscent of “cue theory,” as first discussed by Campbell, Converse, Miller and Stokes (1960) to explain how uninformed citizens can, nonetheless, form opinions about political issues and institutions.

In the absence of full information, people formulate opinions by using short cuts or “cues” available to them, applying their knowledge of one issue to that of an issue about which they have little knowledge. Specifically, we know that an uninformed citizenry casts votes notwithstanding its lack of knowledge about the candidates; voters make their decisions using short cuts or “cues,” drawing upon information on other subjects about which they are more knowledgeable, namely the party identifications of the candidates (Berelson, Lazarsfeld and McPhee 1954). Thus, if citizen A likes the Democratic Party and Candidate X is a Democrat, A will vote for Candidate X.

Extending this body of public opinion scholarship beyond the voting booth, studies in the 1960s focused on the public’s trust in various political institutions (state, federal and international), seeking to understand how low-visibility institutions can acquire the public’s

the Roberts Courts. Indeed, a large minority of the public remains convinced that President Obama is a Muslim (see Pew’s August 2010 poll, a report of which is here: <http://people-press.org/report/645/>).

trust (Stokes 1962). Scholars found that citizens rely on opinions they hold about other, more visible institutions, and simply transfer those opinions to low-visibility institutions. For example, an opinion about an individual's congressman is based, in part, on her or his opinion about the president, particularly when casting votes in mid-term elections (Gronke, Koch and Wilson 2003). Similarly, support for Congress is directly tied to presidential popularity (Patterson and Caldeira 1990).

More on point, early studies of Supreme Court legitimacy argued that the U.S. Supreme Court, which can be considered a relatively low-visibility institution, might acquire diffuse support via respondents' approval or knowledge of other institutions, including (a) the ruling political party (Murphy and Tanenhaus 1968); (b) the party of the incumbent president (Dolbeare and Hammond 1968); and (c) the president (Casey 1975). Similarly, Gibson and Caldeira found that Europeans knew little about the European Court of Justice ("ECJ"), yet were able to articulate confidence levels for the ECJ by relying on their assessments of the highly-visible European Union (Caldeira and Gibson 1995; Gibson and Caldeira 1998). Cue theory is also applicable to state courts; confidence in state supreme courts was found to be tied to assessments of the state legislature and the governor (Lehne and Reynolds 1978; Benesh 2006). In general, while information levels of the citizenry are often lamented, a host of scholars have found that people find a way to deal with their information limitations and still make reasoned decisions (Lupia and McCubbins 1998).

In addition, studies have consistently shown that those with low knowledge of a certain political institution, most often the Supreme Court or state courts, base their assessments of legitimacy on their more general feelings of trust in the *entire government* rather than a

particular political institution (Caliendo 1996; Caldeira and Gibson 1995; Fagan 1981; Dougherty, Lindquist and Bradbury 2006; Lehne and Reynolds 1978; Murphy, Tanenhaus and Kastner 1973; Olson and Huth 1998; Parker and Parker; Zemans 1991).

Applying these various literatures, we theorize that lower level political institutions may be judged using various sorts of information shortcuts. First, the respondent may be influenced by his or her perceptions of higher political institutions, such that the more favorably the respondent views the Supreme Court and other high level institutions of government, the more favorably s/he will view the circuit courts, even though the respondent may know little about these courts. Indeed, we find some support for this theory in that support for the Supreme Court is the most influential independent variable in the model of lower court support presented in Table 4.

Our systemic support theory may also run in the opposite direction such that uninformed respondents will draw on their opinions of trial courts to form an opinion about the intermediate federal appellate courts. Lacking direct observational information about the circuit courts, respondents might be expected to take cues from what they know about district courts or state trial courts when asked about their confidence in or approval of the circuit courts. People have a much higher likelihood of having experienced first hand, or knowing someone who has experienced first hand, some form of trial court, and they may use that experiential knowledge, especially with respect to the fairness of the procedures witnessed there,¹⁰ to form opinions about the little-known appellate courts. Hence, people with favorable

¹⁰ As noted earlier, the procedural justice literature shows that people's confidence in courts is closely related to the perceived fairness of the procedures employed by those courts. (See Tyler's work for a plethora of examples.)

knowledge and/or experience with trial courts may similarly ascribe higher levels of legitimacy to the circuit courts.

Finally, it might be that the shortcuts people use include information gleaned from popular representations of trial courts on television, either via “real” court programs like “Judge Judy” or “The People’s Court” or through dramatizations such as those found on “Law & Order.” The public may use their media-based knowledge of trial courts as a cue when asked for an opinion on the appellate courts. Research suggests that television may show the justice system in a positive light, hence reaffirming the status quo and encouraging the viewing public to support the criminal justice system (McNeely 1995), and so we theorize that those who regularly view such programs will provide higher legitimacy scores to their circuit courts, thereby imputing their positive feelings about courts in general to the specific courts about which they are being asked in the survey.

Hypotheses

Drawing from the theories discussed above, we will consider the following testable hypotheses.

Knowledge Theory

H1: Respondents with high levels of knowledge about the U.S. Courts of Appeals will have higher levels of legitimacy for them.

H2: Respondents who perceive their circuit court to mirror their own ideology will have higher levels of legitimacy for it.

Expectations Theory

H3: Circuit courts that most closely mirror either the actual or the respondent-perceived ideology of the Supreme Court will have higher levels of diffuse support than circuit courts that do not mirror the ideology of the Supreme Court.

H4: Circuit courts that are either actually or respondent-perceived as being overturned most often will have lower levels of legitimacy than circuit courts not (actually or perceived to be) as often overturned.

Systemic Support Theory

H5: The more legitimacy a respondent attributes to other governmental institutions, the more legitimacy s/he will ascribe to the circuit courts.

H6: The more positive the respondent's perceptions regarding the fairness of procedures in the trial courts, the more legitimacy s/he will ascribe to the circuit courts.

H7: Those who have had "good" prior experiences with trial courts (or know someone who did) will offer higher levels of legitimacy to the circuit court than those who have no experiences with trial courts.

H8: Those who have had "bad" prior experiences with trial courts (or know someone who did) will offer lower levels of legitimacy to the circuit than those who have no experiences with trial courts.

H9: Frequent viewers of court-related television programming will have higher levels of legitimacy for the circuit courts than those who rarely watch such programming.

Conclusions

The lower federal courts decide cases every day that are essential to a democracy and yet, lower federal court judges are not accountable to the people nor are their decisions often reversed (or even reviewed) by the U.S. Supreme Court. Their decisions are not self-implementing. Hence, our confidence in these lower federal courts -- to make the right decisions and to decide cases fairly -- is essential to upholding the rule of law. Courts have come under fire recently: Members of Congress have threatened federal courts (see, e.g., Goodnough 2005 and Stolberg 2005), conservative commentators have compared some of them with the September 11th terrorists (Robertson 2005), the former Chair of the House Judiciary Committee has sent letters to Courts of Appeals judges about particular rulings

(Possley 2005), and CNN is reporting an 89% increase in threats made to federal judges (CNN Newsroom, March 28, 2009).

Our survey shows that people continue to have confidence in the lower federal courts. If simply asked, “What is your level of confidence in the lower federal courts,” respondents overwhelming answer that they have at least some (62%), if not a great deal (14%). This is less than those professing some (54%) or a great deal of confidence in the Supreme Court (31%), but it is still substantial. However, it is essential, at this moment in time, to understand what drives that support in order to assure it does not diminish so much that our federal courts lose their primary source of power. This independent, co-equal branch of government needs power in our democracy so it can protect and further the rule of law.

Table 1
Knowledge of Lower Federal Courts

Question	Received Knowledge Paragraph			Did Not Receive Knowledge Paragraph		
	Correct	Incorrect	Don't Know	Correct	Incorrect	Don't Know
How many levels in federal judiciary?	65%	23%	12%	49%	35%	17%
Which level final say?	85%	10%	6%	84%	13%	3%
Which level trials?	79%	18%	3%	81%	16%	3%
Which system tries violations of federal law?	77%	21%	2%	78%	22%	1%
Length of term for lower fed court judge?	51%	43%	7%	36%	51%	12%
Who selects lower fed court judges?	24%	73% ¹¹	3%	24%	64%	11%

Note: Highlighted variables denote statistically significant differences using a two-tailed chi-square test, $p < 0.05$.

¹¹ This includes those who chose "The President" as a response, however. If we include those responses as correct, 50% of those read the paragraph answered correctly and 36% of those not read the paragraph answered correctly.

Table 2
Knowledge of Courts Experiment

Question	Percent Correct	Percent Don't Know
How many levels in federal judiciary?	52.5%	26%
Which level final say?	66.9% ¹²	5.9%
Which level trials?	52.8%	9.1%
Which system tries violations of federal laws?	63.7%	10.4%
Length of term for lower fed ct judge?	20.5% ¹³	22.1%
Who selects lower court judges?	24% ¹⁴	18.9%

¹² On this question, we used two different question wordings. The first asked which *level of federal court* had the final say on constitutional questions; the second asked which *branch of government* did so. Clearly the question concerning levels of the federal courts was easier than that considering institutions: of the first group, 75% answered correctly; of the second group, 59% answered correctly. The difference is statistically significant.

¹³ This question was also tested in terms of wording. Respondents in one version were asked, "What is the length of term for a lower federal court judge?" and could choose from two years, four years, six years, ten years, for life, or don't know. Respondents in the other version were asked, "Some judges in the U.S. serve for a set number of years; others serve a life term. Do judges on the lower federal courts serve for a set number of years or for a life term?" Surprisingly, more people chose the correct answer to the first question (24%) than to the second (17%). (The difference is, again, statistically significant.) Indeed, most respondents to both questions deemed federal judges to have a set term (44% using the first wording chose one of the set terms, and 61% using the second wording chose "Serve for a set term").

¹⁴ Again, we tried two different question wordings. In the first, we asked "Some judges in the U.S. are elected; others are appointed to the bench. Are judges on the lower federal courts elected or appointed to the bench?" 35% said they were appointed, while 39% thought they were elected. In the second wording, we asked, "Who selects lower federal court judges?" giving the choices of "the President," "both houses of Congress," "the Senate," "the people through elections," and "the President with the advice and consent of the Senate." Under this wording, 13% correctly chose the last option and an additional 8.2% (not completely incorrectly) chose the President. But, the most populous response category was "the people through elections," chosen by 37.7% of respondents. The difference between those people choosing elections are, obviously, not significant, though the percentage getting the question "correct" is so.

Table 3: Legitimacy of the lower federal courts and the U.S. Supreme Court

Pilot Study Findings		
Question	Percent Supportive ¹⁵ Lower Federal Courts	Percent Supportive U.S. Supreme Court
If the (lower federal courts/U.S. Supreme Court) started making a lot of decisions that most people disagree with, it might be better to do away with the (lower federal courts/U.S. Supreme Court) altogether.	61%	77%
The right of the (lower federal courts/U.S. Supreme Court) to decide certain types of controversial issues should be reduced by Congress.	51%	64%
The (lower federal courts/U.S. Supreme Court) can usually be trusted to make the right decision.	34%	48%
People should be willing to do everything they can to make sure that any proposal to abolish the (lower federal courts/U.S. Supreme Court) is defeated.	57%	62%
The (lower federal courts/U.S. Supreme Court) get(s) too mixed up in politics.	40%	37%
People should obey a decision of the (lower federal courts/U.S. Supreme Court) even if they do not agree with it.	57%	75%
It would not make much difference to me if the U.S. Constitution were rewritten to reduce the powers of the (lower federal courts/U.S. Supreme Court).	75%	73%
Student Experiment Findings		
If the (lower federal courts/U.S. Supreme Court) started making a lot of decisions that most people disagree with, it might be better to do away with the (lower federal courts/U.S. Supreme Court) altogether.	58%	74%
The right of the (lower federal courts/U.S. Supreme Court) to decide certain types of controversial issues should be reduced by Congress.	41%	55%
The (lower federal courts/U.S. Supreme Court) can usually be trusted to make the right decision.	28%	57%
The (lower federal courts/U.S. Supreme Court) get(s) too mixed up in politics.	17%	24%

¹⁵ Sum of those answering either (1) strongly disagree and (2) somewhat disagree, or (5) strongly agree and (4) somewhat agree, depending on the question wording in the national survey; and sum of those answering 1 (strongly disagree), 2, 3 (somewhat disagree) or 5, 6 (somewhat agree), 7 (strongly agree) for the student survey.

Table 4
Support for Lower Federal Courts

Variable	No Religion	Including Religion
Support for U.S. Supreme Court (additive scale of diffuse supp)	0.434 (0.076)***	0.430 (0.075) ***
Knowledge (number correct)	0.185 (0.258)	0.117 (0.259)
Race (1 = Black)	-1.623 (1.367)	-0.857 (1.372)
Conservatism (scale Lib to Cons)	0.055 (0.239)	0.125 (0.245)
Party (scale Dem to Repub)	0.113 (0.210)	0.093 (0.213)
Education (highest level)	0.065 (0.255)	-0.019 (0.257)
Gender (1 = male, 2 = female)	-0.160 (0.656)	-0.229 (0.662)
Born-Again Christian (1 = yes)	--	-1.974 (0.679) **
Model fit (Adj r ² , SEE)	0.204, 4.189	0.243, 4.122

Standard errors in parens

*** p < 0.000, ** p < 0.05, * p < 0.10

DV = Additive scale of diffuse support for lower federal courts (ranges 12 – 35)

Table 5
Support for U.S. Supreme Court

Variable	No Religion	Including Religion
Support for lower federal courts (additive scale of diffuse supp)	0.373 (0.065) ***	0.387 (0.067) ***
Knowledge (number correct)	0.610 (0.235) **	0.589 (0.242) **
Race (1 = Black)	-0.567 (1.272)	-0.629 (1.303)
Conservatism (scale Lib to Cons)	-0.082 (0.222)	-0.079 (0.233)
Party (scale Dem to Repub)	-0.058 (0.194)	-0.023 (0.202)
Education (highest level)	0.654 (0.231) **	0.716 (0.238) **
Gender (1 = male, 2 = female)	-0.478 (0.607)	-0.299 (0.629)
Born-Again Christian (1 = yes)	--	0.304 (0.661)
Model fit (Adj r ² , SEE)	0.317, 3.511	0.291, 3.912

Standard errors in parens

*** p < 0.000, ** p < 0.05, * p < 0.10

DV = Additive scale of diffuse support for U.S. Supreme Court (ranges 14 – 34)

Works Cited

- Abramowitz, Alan and Kyle Saunders. 2005. "Why Can't we all get Along: The Reality of a Polarized America." *The Forum*. Available at: <http://www.bepress.forum/vol3/iss2/art1>.
- Adamany, David W., and Joel B. Grossman. 1983. "Support for the Supreme Court as a National Policymaker," *Law and Politics Quarterly* 5: 405-37.
- Baird, Vanessa A. 2001. "Building Institutional Legitimacy: The Role of Procedural Justice," *Political Research Quarterly* 54: 333-54.
- Baum, Lawrence. 2003. *The Supreme Court*. 8th edition. Washington, DC: CQ Press.
- Beatty, Kathleen Murphy, and Oliver Walter. 1984. "Religious Preference and Practice: Reevaluating Their Impact on Political Tolerance," *Public Opinion Quarterly* 48: 318-29.
- Benesh, Sara C. 2006. "Understanding Public Confidence in American Courts," *Journal of Politics* 68: 697-707.
- 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.
- Caldeira, Gregory A. 1986. "Neither the Purse Nor the Sword: The Dynamics of Public Confidence in the United States Supreme Court," *American Political Science Review* 80: 1209-26.
- Caldeira, Gregory A. and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36(August):635-64.
- Caldeira, Gregory A. and James L. Gibson. 1995. "The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support." *American Political Science Review* 89(June):356-76.
- Cameron, Charles M., Jeffrey A. Segal and Donald Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions." *American Political Science Review* 94(1): 101-116.
- Campbell, A., P. E. Converse, W. E. Miller, and D. E. Stokes. *The American Voter*. New York: John Wiley & Sons.
- Carp, Robert A., and Ronald Stidham. 2001. *The Federal Courts*. 4th ed. Washington, DC: CQ Press.

- Carp, Robert A., and Ronald Stidham. 2004. *Judicial Process in America*. 6th edition. Washington, DC: CQ Press.
- Casper, Jonathan D., Tom R. Tyler, and Bonnie Fisher. 1988. "Procedural Justice in Felony Cases," *Law and Society Review* 22: 483-508.
- Cigler, Allan, and Mark R. Joslyn. 2002. "The Extensiveness of Group Membership and Social Capital: The Impact on Political Tolerance Attitudes," *Political Research Quarterly*, 55: 7-25.
- CNN Newsroom, "Threat to Federal Judges Jump: Marshall Service Reports 89% Increase," Saturday, March 28, 2009, 11:45 AM. Story available at: <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202429189887&drss=nlj>.
- Corley, Pamela C. 2009. "Uncertain Precedent: Circuit Court Responses to Supreme Court Plurality Opinions." *American Politics Research* 37(1): 30-49.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: the Supreme Court as a National Policy-Maker," *Journal of Public Law* 6: 279-95.
- Docherty, J. S., & Caton Campbell, M. (2006). Consequences of principal and agent. In A. K. Schneider & C. Honeyman (Eds.), *The negotiator's fieldbook: The desk reference for the experienced negotiator* (pp. 497-504). Washington, DC: American Bar Association, Dispute Resolution Section.
- Dolbeare, Kenneth M., and Phillip E. Hammond. 1968. "The Political Party Bias of Attitudes toward the Supreme Court," *Public Opinion Quarterly* 37: 16-30.
- Dougherty, George w., Stefanie A. Lindquist, and Mark D. Bradbury. 2006. "Evaluating Performance in State Judicial Institutions: Trust and Confidence in the Georgia Judiciary." *State and Local Government Review* 38(3):176-90.
- Durr, Robert H., Andrew D. Martin, and Christina Wolbrecht. 2000. "Ideological Divergence and Public Support for the Supreme Court," *American Journal of Political Science* 44: 768-76.
- Easton, David. 1965. *A Systems Analysis of Political Life*. New York: Wiley.
- Elifson, Kirk W., and C. Kirk Hadaway. 1985. "Prayer in Public Schools: When Church and State Collide," *Public Opinion Quarterly*, 49: 317-329.
- Epstein, Lee, Jeffrey A. Segal, Harold J. Spaeth and Thomas G. Walker. 1994. *The Supreme Court Compendium: Data, Decisions and Developments*. Washington, DC: CQ Press.

- Evans, John H. 1997. "Worldviews or Social Groups as the Source of Moral Value Attitudes: Implications for the Culture Wars Thesis," *Sociological Forum*, 12: 371-404.
- Fagan, R. W., (1981). Public support for the courts: An examination of alternative explanations. *Journal of Criminal Justice*, 9, 403-418.
- Franklin, Charles H., and Liane C. Kosaki. 1995. "Media, Knowledge and Public Evaluations of the Supreme Court," in *Contemplating Courts*, ed. Lee Epstein. Washington, DC: CQ Press, pp. 352-75.
- 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: 141-55.
- Gibson, James L. 1989. "Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance," *Law and Society Review* 23: 469-96.
- Gibson, James L. and Gregory A. Caldeira. 2009. "Confirmation Politics and the Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science*, 53(1):139-155.
- Gibson, James L. and Gregory A. Caldeira. 2009. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton, NJ: Princeton University Press.
- Gibson, James L., Gregory A. Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92 (2): 343-358.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "Measuring Attitudes Toward the United States Supreme Court." *American Journal of Political Science* 47 (2): 354-367.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2005. "Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment," *Political Research Quarterly* 58: 187-201.
- Gibson, James L., Milton Lodge, Charles Tabor, and Benjamin Woodson. 2010. "Can Judicial Symbols Produce Persuasion and Acquiescence? Testing a Micro-Level Model of the Effects of Court Legitimacy." Presented at the 2010 Annual Meeting of the Midwest Political Science Association, Chicago, IL.

- Goodnough, Abby. 2005. "In Schiavo Feeding-Tube Case, Notoriety Finds Unlikely Judge." *New York Times* (Mar. 17). Available at:
<http://www.nytimes.com/2005/03/17/national/17greer.html?partner=rssnyt&emc=rss>.
- Handberg, Roger. 1984. "Public Opinion and the Supreme Court: 1935-1981." *International Social Science Review* 59: 3-13.
- Handberg, Roger and William S. Maddox. 1982. "Public Support for the Supreme Court in the 1970s." *American Politics Quarterly* 10: 333-346.
- Hertel, Bradley R., and Michael Hughes. 1987. "Religious Affiliation, Attendance, and Support for 'Pro-Family' Issues in the United States," *Social Forces*, 65: 858-882.
- Hibbing, John R. & Theiss-Morse, Elizabeth. 1995. *Congress as Public Enemy: Public Attitudes toward American Political Institutions*. New York: Cambridge University Press.
- Hibbing, John R. & Theiss-Morse, Elizabeth. 2002. *Stealth Democracy: Americans' Beliefs about How Government Should Work*. New York: Cambridge University Press.
- Hoekstra, Valerie J. 2003. *Public Reaction to Supreme Court Decisions*. New York: Cambridge University Press.
- Hoekstra, Valerie J. 2000. "The Supreme Court and Local Public Opinion," *American Political Science Review*, 94: 89-100.
- Ingram, Peter. 1985. "Maintaining the Rule of Law." *The Philosophical Quarterly* 35: 359-381.
- Kessel, John H. 1966. "Public Perceptions of the Supreme Court," *Midwest Journal of Political Science* 10: 167-91.
- Lehne, R. and J. Reynolds. 1978. "The Impact of Judicial Activism on Public Opinion." *American Journal of Political Science* 22:896-904."
- Lipset, Seymour Martin, and William Schneider. 1987. *The Confidence Gap: Business, Labor and Government in the Public Mind*. Rev. ed. Baltimore: Johns Hopkins University Press.
- Lupia, Arthur and Mathew D. McCubbins. 1998. *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* New York: Cambridge University Press.
- Marshall, Thomas R. 1989. *Public Opinion and the Supreme Court*. Boston: Unwin Hyman.
- Miller, Arthur H., and Martin P. Wattenberg. 1984. "Politics From the Pulpit: Religiosity and the 1980 Elections," *Public Opinion Quarterly* 48: 301-317.

- Murphy, Walter F., and Joseph Tanenhaus. 1968. "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: 357-82.
- Murphy, Walter F., Joseph Tanenhaus, and Daniel Kastner. 1973. *Public Evaluations of Constitutional Courts: Alternative Explanations*. Beverly Hills: Sage.
- Nardin, Terry. 2001. *The Philosophy of Michael Oakeshott*. University Park: Penn State University Press.
- O'Barr, William M., and John M. Conley. 1988. "Lay Expectations of the Civil Justice System," *Law and Society Review* 22: 137-61.
- Olson, S. M., & Huth, D. A., (1998). Explaining Public Attitudes Toward Local Courts, *Justice System Journal*, 20, 41.
- Possley, Maurice. 2005. "Lawmaker prods courts, raises brows; Demands longer term in Chicago drug case." *Chicago Tribune* (July 10). Available at: <http://pqasb.pqarchiver.com/chicagotribune/access/865093541.html?dids=865093541:865093541andFMT=ABSandFMFS=ABS:FTandtype=currentanddate=Jul+10%2C+2005andauthor=Maurice+Possley%2C+Tribune+staff+reporterandpub=Chicago+Tribuneandedit ion=andstartpage=1anddesc=Lawmaker+prods+court%2C+raises+brows>.
- Roberts, Julian B. and Loretta Stalans. 1997. *Public Opinion , Crime and Criminal Justice*. Boulder, CO: Westview Press.
- Robertson, Pat. 2005. Interview with George Stephanopoulos on ABC's This Week, Aired May 1, 2005. <http://www.patrobertson.com/PressReleases/thisweekgs.asp>.
- Scheb, John M. II, and William Lyons. 2001. "Judicial Behavior and Public Opinion: Popular Expectations Regarding the Factors that Influence Supreme Court Decisions," *Political Behavior* 23: 181-94.
- Scherer, Nancy. 2010. "Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. System Possible?" forthcoming *Northwestern University Law Review* 2011.
- Scherer, Nancy and Brett Curry. Forthcoming 2010. "Does Descriptive Race Representation Enhance Institutional Legitimacy: The Case of the U.S. Courts," *Journal of Politics*.
- Shapiro, Robert Y., and Yaeli Block-Elkon. 2005. "Partisan Conflict, Public Opinion and U.S. Foreign Policy." Paper presented at the Inequality and Social Policy Seminar, John F. Kennedy School of Government, Harvard University, December 12, 2005.

- Stolberg, Sheryl Gay. 2005. "Majority Leader Asks House Panel to Review Judges." *The New York Times* (Apr. 14). Available at: <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9C07E4DE103EF937A25757C0A9639C8B63&sec=health&spn&pagewanted=2>.
- Stokes, D. E. (1962). Popular evaluations of government: An empirical assessment. In H. Cleveland, & H. D. Lasswell (Eds.), *Ethics and bigness: Scientific, Academic, Religious, Political, and Military* (pp. 61-72). New York: Harper.
- Tanenhaus, Joseph, and Walter F. Murphy. 1981. "Patterns of Public Support for the Supreme Court: a Panel Study." *Journal of Politics* 43: 24-39
- Thisbaut, John, and Laurens Walker. 1975. *Procedural Justice: A Psychological Analysis*. New York: John Wiley & Sons.
- Tyler, Tom R. 1984. "The Role of Perceived Injustice in Defendants' Evaluations of Their Courtroom Experience," *Law and Society Review* 18: 51-74.
- Tyler, Tom R. 1988. "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures," *Law and Society Review* 22: 301-55.
- Tyler, Tom R. 1990. *Why People Obey the Law: Procedural Justice, Legitimacy, and Compliance*. 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 and Society Review* 28: 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: 629.
- Tyler, Tom R., and E. Allan Lind. 1990. "Intrinsic Versus Community-based Justice Models: When Does Group Membership Matter?" *Journal of Social Issues* 46: 83-94.
- 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: 621-30.
- Wald, Kenneth D. 1987. *Religion and Politics in the United States*. New York: St. Martin's Press.

Wasby, Stephen L. 2005. "How the Ninth Circuit Fares in the Supreme Court: The Intercircuit Conflict Cases." 1 *Seton Hall Cir. Rev.* 119

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: 191-211.

Wermiel, Steven. 2006. "Exploring the Myths About the Ninth Circuit." *Arizona State Law Review* 48:355-367.

Zemans, F. K., (1991). "In the Eye of the Beholder: The Relationship Between the Public and the Courts." *The Justice System Journal* 15, No. 2, 722-740.

Appendix A: Pilot Study Questionnaire

[Half get knowledge paragraph; half do not; 210 respondents total].

Knowledge Paragraph

This is a survey about the lower federal courts of the United States. The U.S. federal courts are arranged in a triangle. The U.S. Supreme Court that sits in Washington is at the top, the U.S. Courts of Appeals in the middle, and the U.S. District Courts at the bottom. The Supreme Court and the U.S. Courts of Appeals are both appellate courts; that is, they hear appeals from people who lost their cases at trial. The U.S. District Courts are the federal trial courts; those accused of breaking federal laws have their trials there. All of these federal courts also interpret the U.S. constitution. These courts are not the ones you would go to to dispute a traffic ticket or to get a divorce – those would be state courts, not federal courts. All judges who serve on the federal courts are nominated by the President and then confirmed by the Senate, and they all serve for life terms. Both the U.S. Courts of Appeals and the U.S. District Courts are commonly referred to as the “lower federal courts.” In the next set of questions, we seek information about the lower federal courts, and not the Supreme Court that sits in Washington or the state courts present in each state.

Knowledge Questions

1. How aware are you of the lower federal courts?
 1. Very aware.
 2. Somewhat aware.
 3. Not very aware.
 4. Somewhat unaware.
 5. I have never heard of them.

2. How many levels of courts are there in the federal judicial court system?
 1. 1
 2. 2
 3. 3
 4. 4

3. Which level of courts in the federal judicial system has the final say on all legal claims?
 1. district courts
 2. court of appeals
 3. Supreme Court

4. Which level of courts in the federal judicial system conducts trials?
 1. district court
 2. court of appeals
 3. Supreme Court

5. Cases that only involve violations of federal laws are tried in which system of courts?

1. state courts
2. federal courts
3. either system of courts
4. neither system of courts

6. What is the length of term for a lower federal court judge?

1. two years
2. four years
3. six years
4. ten years
5. for life

7. Who selects lower federal court judges?

1. the President
2. both houses of Congress
3. the Senate
4. the people through elections
5. the President with the advice and consent of the Senate

8. Which courts do we refer to when we say "lower federal courts"?

1. district courts
2. courts of appeals
3. Supreme Court
4. district courts plus courts of appeals
5. district courts plus courts of appeals plus the Supreme Court

Diffuse Support Lower Federal Courts

The following is a series of statements. Please indicate whether you agree or disagree with the statement on a scale of 1 to 5. On this scale, 1 means you "strongly disagree;" 2 means you "disagree somewhat," 3, right in the middle on the scale, means you "neither agree nor disagree." On the other end of the scale, 5 means you "strongly agree;" and 4 means you "agree somewhat."

By lower federal courts, we mean to refer to the district courts and the courts of appeals, and NOT the U.S. Supreme Court that sits in Washington or the state courts that handle traffic and divorce proceedings.

9. If the lower federal courts started making a lot of decisions that most people disagree with, it might be better to do away with the lower federal courts altogether. Where do you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

10. The right of the lower federal courts to decide certain types of controversial issues should be reduced by Congress. Where do you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

11. The lower federal courts can usually be trusted to make the right decision. If you had to rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree), where would you place yourself?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

12. People should be willing to do everything they can to make sure that any proposal to abolish the lower federal courts is defeated. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

13. The lower federal courts get too mixed up in politics. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

14. People should obey a decision of the lower federal courts even if they do not agree with it. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)? yourself?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

15. It would not make much difference to me if the U.S. Constitution were rewritten to reduce the powers of the lower federal courts. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

Diffuse Support U.S. Supreme Court

Now I'd like to change focus and ask you about the U.S. Supreme Court that sits in Washington, NOT the lower federal courts.

16. If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the U.S. Supreme Court altogether. Where do you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

17. The right of the U.S. Supreme Court to decide certain types of controversial issues should be reduced by Congress. Where do you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

18. The U.S. Supreme Court can usually be trusted to make the right decision. If you had to rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree), where would you place yourself?

---1---	---2---	---3---	---4---	---5---
strongly disagree	disagree	neither agree	somewhat	strongly

disagree somewhat nor disagree agree agree

19. People should be willing to do everything they can to make sure that any proposal to abolish the U.S. Supreme Court is defeated. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

----1----	----2----	----3----	----4----	----5----
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

20. The U.S. Supreme Court gets too mixed up in politics. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

----1----	----2----	----3----	----4----	----5----
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

21. People should obey a decision of the U.S. Supreme Court even if they do not agree with it. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

----1----	----2----	----3----	----4----	----5----
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

22. It would not make much difference to me if the U.S. Constitution were rewritten to reduce the powers of the U.S. Supreme Court. Where would you rate yourself on a scale of 1 (strongly disagree) to 5 (strongly agree)?

----1----	----2----	----3----	----4----	----5----
strongly disagree	disagree somewhat	neither agree nor disagree	somewhat agree	strongly agree

Descriptive Representation

23. What percentage of judges on the lower federal courts do you believe are black?

1. Less than 10 percent
2. 10 to 19 percent
3. 20 to 29 percent
4. 30 to 39 percent
5. 40 to 49 percent
6. 50 to 100 percent

Confidence Questions

24. What is your level of confidence in the Supreme Court?

1. A great deal of confidence
2. Some confidence
3. Only a little confidence
4. No confidence at all

25. What is your level of confidence in the lower federal courts?

1. A great deal of confidence
2. Some confidence
3. Only a little confidence
4. No confidence at all

Presidential Election Questions

26. What role if any did potential judicial appointments play in your vote for president in 2008?

- a. A great deal
- b. Some
- c. Only a little bit
- d. None at all
- e. Did not vote

27. For whom did you vote for president in 2008?

- a. John McCain
- b. Barack Obama
- c. Other

Demographic Questions

28. What is your gender?

1. Male
2. Female

29. What is your race?

1. White
2. Black
3. Asian
4. Hispanic
5. Other (please specify)

30. What year were you born? _____

ASK IF Q.29 = Refused

30a. Could you please tell me if you are between the ages of [READ LIST]...

1. 18 to 29
2. 30 to 44
3. 45 to 59
4. 60 to 74
5. 75 or older

31. What is the last grade of school you completed?

1. 8th grade or less
2. Some high school
3. High school degree
4. Some college
5. College degree
6. Some graduate school
7. Graduate school degree

32. Generally speaking, do you usually think of yourself as:

1. a Strong Democrat
2. a Democrat
3. an Independent but Lean Democrat
4. an Independent
5. an Independent but Lean Republican
6. a Republican
7. a Strong Republican

33. How would you characterize your political views as:

1. Very liberal
2. Liberal
3. Somewhat Liberal
4. Moderate
5. Somewhat conservative
6. Conservative
7. Very conservative

34. What is your religion?

- 1.Catholic
- 2.Protestant
- 3.Jewish
- 4.Muslim
- 5.Other (please specify)
7. No religious affiliation

35. Do you consider yourself an Evangelical Christian or a Born-Again Christian?

1. Yes
2. No