

New Perspectives for the Comparative Study of the Judiciary: The State Supreme Court Project

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In this essay, we report on the promise and possibilities offered by careful study of American state supreme courts. We detail the measures taken in the Brace-Hall State Supreme Court Project to produce reliable data from the fifty state courts for the scholarly community. In addition, we illustrate some prominent features of these courts and the tremendous variety that exists among them. With the release of these data to the scholarly community, many exciting opportunities exist for empirically evaluating comprehensive theories of judicial behavior and politics that integrate case, judge, institution, and context.

For roughly five years, Paul Brace of Rice University and Melinda Gann Hall of Michigan State University have supervised the organization and management of the National Science Foundation-sponsored State Supreme Court Project. This project sought to archive systematically collected data about all fifty-two state supreme courts to advance the scholarly understanding of these courts, their judges, and the decisions they reach.

The State Supreme Court Project parallels important efforts undertaken to archive data on the U.S. Supreme Court (Spaeth, 1988; Gibson, 1991), the U.S. Circuit Court of Appeals (Songer, 1990), biographical characteristics of federal judges (Zuk, Barrow, and Gryski, 1993), and courts in other nations (Tate et al., 1999). As these many projects reach completion, legal practitioners and judicial scholars have unprecedented opportunities to examine legal processes systematically and from many different perspectives.

The State Supreme Court Project was a formidable undertaking that forced us to think carefully and systematically about state supreme courts, their dockets, and their decisions. The project has entailed the meticulous collection of comprehensive information about state supreme courts, their decisions, and the behavior and characteristics of the justices that make them. Issues concerning reliability, validity, and efficiency have been central and recurring concerns, as we have compiled the largest amount of theoretically and substantively useful information about the fifty-two state supreme courts ever collected.

In this essay, we highlight the significance of this project as a rich information source and as an important development in the judicial subfield. We also describe the innovative procedures and processes we developed and employed to ensure these data were of maximum utility to judicial scholars. Finally, we take this opportunity to pre-

sent many intriguing patterns and differences that are emerging from these data. These simple patterns make clear that the large number of these courts and their striking variations in structures, membership, dockets, and outcomes are a fruitful laboratory for evaluating theories about judicial behavior and politics.

Judicial politics scholarship currently stands at the confluence of some important theoretical and methodological trends. The drive for more-encompassing and more-comprehensive accounts of judicial behavior has led to productive infusions of both economic and psychological theories (Baum, 1997). Methodologically, quantitative research of increasingly high quality has led to significant advances in our understanding of judicial behavior. At the same time, there has been a growing appreciation of the fundamental similarities between qualitative and quantitative research when both are of high rigor (Kritzer, 1994, 1996; King, Keohane, and Verba, 1994). While these developments have refined and clarified our focus on judges as individual decision makers, they have also promoted a greater awareness of the vital role context plays on shaping judicial decisions. Studies of judicial behavior that employ research designs incorporating the influence of alternative contexts and institutions show tremendous promise for unraveling many remaining mysteries concerning judicial choice.

For state court justices and other interested parties, the State Supreme Court Project data archive will place state supreme courts in a useful comparative light. These data will make it possible for jurists in one state to compare and contrast their dockets and outcomes with those from other states. Reform groups interested in the effects of judicial selection methods on the courts can gauge their effects on judicial decision making. Attorneys or other interested parties may gauge the relative success or failure of certain types of cases across the states. For justices, attorneys, and interested parties, the State Supreme Court Project data archive will be a useful resource for addressing many questions much more efficiently than was possible in the past.

U.S. State Supreme Courts: Limits and Prospects

Given the critical importance of state supreme courts within the U.S. legal system, and the central role they play within the states' political systems, these tribunals deserve to be studied more comprehensively than they have to date. Beyond their obvious legal and political importance, these courts provide excellent venues for examining the effects of different institutional arrangements, laws, and contexts on judicial decision making. Some of the most notable differences concern legal frameworks, court rules, judge selection procedures, and contextual differences between states. There are considerable differences between state legal systems, with state constitutions ranging from roughly 8,000 to over 200,000 words (Hammons, 1999). State supreme courts employ a wide variety of opinion assignment procedures, offering varying degrees of influence for chief justices or senior justices to form coalitions (Hall, 1990). Currently, the states employ five distinctive judicial selection procedures, and judicial elections are more competitive than commonly believed (Hall, 2001). Contextually, the states vary significantly in mass

and elite ideology (Erikson, Wright, and McIver, 1993; Berry et al., 1998) and exhibit marked differences in political tolerance and opinions about race, abortion, the death penalty, and other issues (Brace et al., 2001). Taken together, these legal-structural-contextual variations offer many analytical and theoretical advantages that cannot be duplicated by focusing on the federal courts. As Greg Caldeira stated almost two decades ago, "For the empirical social scientist, political and legal institutions in the American states have the singular virtue of encompassing intriguing peculiarities within a range of contexts that is sufficiently invariant to be essentially comparable" (Caldeira, 1984:459).

If these advantages are as obvious as they seem, we must wonder why so little effort has been made to capitalize on them. We do not mean to dismiss the important previous work conducted on state supreme courts to date. Even the most casual perusal of the literature on state courts reveals a substantial body of work covering a wide array of significant subjects essential to an understanding of judicial politics. We have a wealth of studies of single institutions or small subsets of state courts addressing such subjects as the voting behavior of state appellate court judges (e.g., Beiser, 1973; Brace and Hall, 1993, 1995; Bradley and Ulmer, 1980; Dubois, 1988; Emmert and Traut, 1994; Fair, 1967; Glick and Vines, 1969, 1973; Hall, 1985, 1987, 1995; Hall and Brace, 1992, 1994; Nagel, 1961; Scheb, Unga, and Hayes, 1989; Sickels, 1965; Ulmer, 1962; Wold, 1978) and judicial elections (e.g., Baum, 1987; Culver and Wold, 1986; Dubois, 1980; Griffin and Horan, 1984; Hojnacki and Baum, 1992; Lovrich and Sheldon, 1984, 1985; Hall, 2001). We also have comprehensive overviews of particular courts' operations (e.g., Sheldon, 1988; Tarr and Porter, 1988). Similarly, scholars of state judicial politics have produced a number of important studies that include all fifty states. Research along these lines considers such aspects of state courts as dissent rates (e.g., Brace and Hall, 1990; Canon and Jaros, 1970; Hall and Brace, 1989; Jaros and Canon, 1971; Patterson and Rathjen, 1976), decision making in particular types of litigation (e.g., Emmert, 1992; Gryski and Main, 1986), the nature of the courts' dockets (e.g., Atkins and Glick, 1974, 1976; Handberg, 1978), judicial impact and implementation (e.g., Canon, 1973, 1977; Romans, 1974; Tarr, 1977), citation patterns among courts (e.g., Caldeira, 1983, 1985), and internal operating rules (e.g., Hall, 1990; McConkie, 1976; Slotnick, 1977). However, this research generally has been either descriptive or has been unable to evaluate the underlying microlevel processes that contribute to macrolevel patterns. Moreover, as a leading scholar of state court politics observed, many of the fifty-state studies now are seriously outdated (Glick, 1991).

Without coordinated effort and substantial support from the National Science Foundation on this project, it would be hard to imagine individual scholars committing the necessary time and effort to creating the data archive necessary for capitalizing on state supreme courts. By providing opportunities for resources and incentives for collaboration, the National Science Foundation played a vital role in the creation of this project and others like it that are forming a scientific infrastructure that is vital for scholarly progress. Unified data archives serve as scientific infrastructure that free scholars from collecting and recollecting the same data. Archives like this allow scholars and their students to devote more time to theoretical and methodological refinements and

may serve to attract researchers that would be unwilling to undertake large data collection efforts on their own. For these reasons, we believe that this archive provides a high value-added component for judicial scholarship.

Building Infrastructure: Designing the State Supreme Court Project

The magnitude of this project required planning, coordination, trial, error, and innovations. Much of what was done could not be anticipated when we proposed the original project. This trial by fire forced us to consider prudently both the utility and practicality of various data we could compile about state supreme courts. For instance, when we began the project, there were many things that seemed desirable in principle but were infeasible in practice because they could not be coded reliably across the states. Another issue that emerged concerned *how* to collect the information. Moreover, our interest in validity and reliability issues, and concern about variations in the skill levels of the research assistants that would work on the project over five years, led us to seek ways to make the coding process as efficient as possible. Using simple paper-and-pencil coding procedures would make it difficult to monitor the quality of data we were coding promptly and regularly. We also learned that our research assistants varied substantially in their understanding of courts and law but this variation diminished as they became more experienced working on the project. To ensure accuracy and intercoder reliability, we wanted our graduate student coders to have answers to common questions that might arise about legal terms and procedures. The needs for experimentation, routine reliability monitoring, and coder instruction led us to develop a coding template using Microsoft Access.¹

The Microsoft Access template, which we developed through extended trial and error, organizes queries about court cases in an efficient manner, restricts the coders' choices to preselected items, and provides pull-down "help" menus to help coders understand basic issues. We invested many months in developing this template, but it allowed us to experiment on randomly selected cases from across the fifty states and compare how our graduate assistants would code information from these cases. From these experiments we learned that some things simply could not be coded reliably and we abandoned them. We also learned where the research assistants needed additional information, and we revised the template to include additional "help" menus to correct this. Through trial and error, we took random samples of cases and continually assessed intercoder reliability and adjusted our coding procedures.

After many iterations over six months, we finalized a template that covers 423 items of information about case characteristics included in the archive.² The case data contains information concerning litigants (appellant and respondent characteristics), case

¹ An example of the template may be found at <http://www.ruf.rice.edu/~pbrace/statecourt/templ1.html>.

² The procedure has proven to be remarkably efficient and reliable. Results of periodic reliability tests conducted throughout the project may be found at <http://www.ruf.rice.edu/~pbrace/statecourt/>

type (criminal, civil private, civil public, etc.), case issues, justice voting (wrote opinion, joined majority, dissented, etc.), and outcome. We merged this case information with biographical characteristics of the justices that includes (where available) age, political party, ideology score (Brace, Langer, and Hall, 2000), year of appointment, religion, race, and gender. In combination, the case and judge characteristic information will allow researchers to examine and compare the issues coming before state supreme courts, the parties involved, the court decisions, and the votes and characteristics of the individual justices.

Data for the archive are taken from all fifty states for the 1995, 1996, 1997, and 1998 sessions. In states with 200 or fewer total cases, all non-per curiam cases were coded. In states with more than 200 cases, we coded a random sample of 200 non-per curiam cases. Over 7,500 cases were coded for each year.

Characteristics of State Supreme Courts

To give some indication of the types of information we have compiled and to illustrate some of the intriguing diversity that exists in state supreme courts, we present some basic features of these courts, their judges, and their decisions below. We must be clear that this information represents only a small sample of the types of information available in the state supreme court data set and are by no means exhaustive. We do hope these simple patterns provoke interest in exploring the data set more fully.

State supreme courts represent a unique and interesting component of state government. While legal doctrine may be important in shaping judicial outcomes, there are also various elements in the political system (the selection method of the justices, the justices' policy preferences, justices' personal backgrounds, etc.) that could affect judicial decision making (Glick, 1971). These courts exhibit a wide variety of institutional structures. They also operate in quite distinctive political environments. These tribunals exhibit substantial variation in method of selection, size, retirement provisions, method of opinion assignment, recognition of seniority, and provisions for advisory opinions (see **Table 1**).

Along with the variations in institutional features of the courts, the justices that sit on these courts exhibit substantial differences in age, race, and gender (see **Table 2**). The typical age for most of the members of these courts is mid-fifties through mid-sixties, but there are some notable standouts. For instance, in Hawaii and Missouri the average age of the justices is below fifty. The number of women and minority judges seated on the high courts also varies substantially. Roughly one-tenth of the states have no female justices, and almost one-half have no nonwhite justices on their high courts in this period.³ Alternatively, in Minnesota, Michigan, and Wisconsin, 40 percent or more of the justices are women. Similarly, states such as Hawaii, California, New York, and New Mexico have 25 percent or more nonwhite justices.

³ Nonwhite refers to Asian, Black, Hispanic, and Native American justices.

Table 1
Basic Structures of the State Supreme Courts

State	Selection	Size	Term (in years)	Opinion Assignment	Advisory Opinions
Alabama	Partisan election	9	6	Rotation by clerk office	Yes
Alaska	Missouri plan	5	10	Rotation by clerk office	No
Arizona	Missouri plan	5	6	Chief justice if in majority else senior majority justice	No
Arkansas	Partisan election	7	8	Rotation by clerk office	No
California	Missouri plan	7	12	Chief justice	No
Colorado	Missouri plan	7	10	Chief justice if in majority else senior majority justice	Yes
Connecticut	Gubernatorial appointment	7	8	Chief justice	No
Delaware	Gubernatorial appointment ^c	5	12	Chief justice	Yes
Florida	Missouri plan	7	6	Rotation by clerk office	Yes
Georgia	Nonpartisan election	7	6	Rotation by clerk office	No
Hawaii	Gubernatorial appointment ^c	5	10	Chief justice	No
Idaho	Nonpartisan election	5	6	Rotation by clerk office	No
Illinois	Partisan election ^a	7	10	Rotation by chief justice	No
Indiana	Missouri plan	5	10	Consensus of the majority	No
Iowa	Missouri plan	9	8	Rotation by chief justice	No
Kansas	Missouri plan	7	6	Chief justice	No
Kentucky	Nonpartisan election	7	8	Chief justice	No
Louisiana	Partisan election	8	10	Random draw by central staff	No
Maine	Gubernatorial appointment	7	7	Rotation by chief justice	Yes
Maryland	Missouri plan	7	10	Chief justice if in majority else senior majority justice	No
Massachusetts	Gubernatorial appointment ^c	7	To age 70	Chief justice	Yes
Michigan	Nonpartisan election	7	8	Random draw after oral argument	Yes
Minnesota	Nonpartisan election	7	6	Rotation by commissioner's office	No
Mississippi	Partisan election	9	8	Random draw by clerk's office	No
Missouri	Missouri plan	7	12	Rotation by chief justice after oral argument	No
Montana	Nonpartisan retention	7	8	Rotation by chief justice	No
Nebraska	Missouri plan	7	6	Rotation by clerk office	No
Nevada	Nonpartisan election	5	6	Rotation by clerk office	No
New Hampshire	Gubernatorial appointment	5	To age 70	Random draw after oral argument	Yes
New Jersey	Gubernatorial appointment	7	7	Chief justice if in majority else senior majority justice	No
New Mexico	Missouri plan ^a	5	8	Rotation by clerk office	No
New York	Gubernatorial appointment	7	14	Random draw after oral argument	No
North Carolina	Partisan election	7	8	Rotation by chief justice after oral argument	No
North Dakota	Nonpartisan election	5	10	Rotation by clerk's office	No
Ohio	Nonpartisan election ^b	7	6	Random draw after oral argument	No
Oklahoma Civil	Missouri plan	9	6	Rotation by chief justice	No
Oklahoma Criminal	Missouri plan	5	6		No
Oregon	Nonpartisan election	7	6	Chief justice	No
Pennsylvania	Partisan election ^a	7	10	Chief justice	No
Rhode Island	Legislative election	5	Life	Rotation by chief justice	Yes
South Carolina	Legislative election	5	10	Rotation by clerk office	No
South Dakota	Missouri plan	5	8	Random draw by clerk's office	Yes
Tennessee	Partisan election	5	8	Random draw after oral argument	No
Texas Civil	Partisan election	9	6	Rotation and random draw	No
Texas Criminal	Partisan election	9	6		No
Utah	Missouri plan	5	10	Rotation by clerk office	No
Vermont	Gubernatorial appointment	5	6	Rotation by chief justice	No
Virginia	Legislative election	7	12	Random draw by clerk's office	No
Washington	Nonpartisan election	9	6	Random draw after by clerk's office	No
West Virginia	Partisan election	5	12	Rotation by chief justice	No
Wisconsin	Nonpartisan election	7	10	Random draw after oral argument	No
Wyoming	Missouri plan	5	8	Chief justice	No

Source: Derived from *The Book of the States* 1998-1999. Council of State Governments, Tables 4.1 and 4.4. The opinion assignment data presented here has been taken from Hall (1990).

^a Retention elections after initial partisan election.

^b Partisan primaries.

^c Governor's choices limited to list provided by the Judicial Nominating Commission.

Table 2
Justice Biographical Characteristics

State	Age ^a	Seniority ^a	Female ^b	Nonwhite ^b	Democratic ^b	Previous Experience ^b		
						Prosecutor	Attorney General	Judge
Alabama	61.09	11.82	9.00	9.00	82.00	36.00	0.00	73.00
Alaska	57.50	14.50	17.00	0.00	33.00	17.00	33.00	67.00
Arizona	59.50	7.33	0.00	0.00	17.00	17.00	0.00	67.00
Arkansas	61.11	9.22	11.00	11.00	89.00	56.00	22.00	78.00
California	60.33	8.67	33.00	33.00	11.00	33.00	22.00	100.00
Colorado	59.11	11.56	22.00	11.00	44.00	11.00	22.00	67.00
Connecticut	58.13	7.38	25.00	13.00	25.00	38.00	0.00	75.00
Delaware	63.33	9.71	14.00	0.00	57.00	0.00	29.00	43.00
Florida	63.78	11.00	11.00	22.00	78.00	44.00	11.00	89.00
Georgia	55.78	7.11	22.00	22.00	89.00	11.00	0.00	78.00
Hawaii	49.60	5.00	20.00	80.00	100.00	40.00	20.00	80.00
Idaho	57.67	8.67	33.00	0.00	83.00	33.00	0.00	50.00
Illinois	64.86	7.00	14.00	14.00	43.00	43.00	0.00	100.00
Indiana	55.29	12.43	14.00	14.00	43.00	29.00	14.00	29.00
Iowa	60.56	13.78	22.00	0.00	11.00	22.00	0.00	89.00
Kansas	63.75	10.75	13.00	0.00	38.00	25.00	13.00	100.00
Kentucky	60.10	8.10	10.00	0.00	60.00	20.00	0.00	60.00
Louisiana	61.20	11.55	18.00	18.00	82.00	45.00	0.00	91.00
Maine	62.50	9.88	13.00	0.00	38.00	0.00	0.00	50.00
Maryland	61.86	14.63	13.00	13.00	88.00	25.00	0.00	75.00
Massachusetts	63.30	13.89	20.00	0.00	40.00	40.00	0.00	30.00
Michigan	62.38	11.33	44.00	22.00	44.00	33.00	0.00	67.00
Minnesota	62.33	8.40	50.00	10.00	50.00	0.00	10.00	30.00
Mississippi	58.50	9.10	10.00	10.00	80.00	30.00	10.00	70.00
Missouri	49.00	6.63	13.00	13.00	13.00	13.00	25.00	63.00
Montana	61.33	10.78	11.00	0.00	44.00	56.00	0.00	11.00
Nebraska	61.00	10.09	0.00	0.00	64.00	36.00	9.00	55.00
Nevada	65.20	11.20	20.00	0.00	40.00	20.00	20.00	60.00
New Hampshire	62.20	11.17	0.00	0.00	0.00	33.00	0.00	67.00
New Jersey	65.50	14.22	22.00	11.00	44.00	11.00	22.00	33.00
New Mexico	58.13	5.38	13.00	25.00	100.00	13.00	13.00	63.00
New York	61.75	9.13	25.00	25.00	50.00	13.00	0.00	88.00
North Carolina	58.25	11.38	13.00	13.00	75.00	25.00	25.00	75.00
North Dakota	55.83	9.00	33.00	0.00	33.00	0.00	33.00	17.00
Ohio	60.00	9.25	25.00	0.00	38.00	38.00	25.00	75.00
Oklahoma Civil	65.78	19.00	33.33	0.00	88.89	64.00	0.00	79.00
Oklahoma Criminal	58.75	6.60	16.67	0.00	40.00	50.00	0.00	50.00
Oregon	58.75	7.50	14.00	0.00	71.00	43.00	29.00	86.00
Pennsylvania	61.40	11.10	10.00	10.00	70.00	30.00	10.00	90.00
Rhode Island	67.00	10.00	33.00	0.00	0.00	0.00	0.00	50.00
South Carolina	61.29	8.86	14.00	14.00	29.00	14.00	0.00	86.00
South Dakota	58.83	9.17	0.00	0.00	0.00	50.00	33.00	83.00
Tennessee	58.63	7.00	38.00	13.00	88.00	25.00	25.00	100.00
Texas Civil	51.27	6.92	16.67	8.33	58.33	33.33	0.00	91.67
Texas Criminal	53.15	8.15	14.29	7.14	42.86	42.86	7.14	21.43
Utah	60.60	13.20	20.00	0.00	80.00	20.00	0.00	60.00
Vermont	59.20	10.60	40.00	0.00	40.00	20.00	40.00	60.00
Virginia	63.14	13.63	25.00	13.00	0.00	13.00	13.00	75.00
Washington	58.83	10.38	23.00	8.00	23.00	46.00	8.00	69.00
West Virginia	59.89	9.89	14.00	14.00	100.00	0.00	0.00	43.00
Wisconsin	62.00	13.33	43.00	0.00	43.00	57.00	0.00	57.00
Wyoming	64.80	10.83	0.00	0.00	83.00	67.00	0.00	33.00

^a These values represent mean values in years.

^b These values represent percentages of the total number of justices sitting on the court.

These courts also vary significantly in their partisan composition, with some state supreme courts having no Democratic justices (New Hampshire, Rhode Island, South Dakota, and Virginia) and others with 100 percent Democratic representation on the bench (Hawaii, New Mexico, and West Virginia). There are also some fairly striking differences in seniority. For example, the average seniority of an Oklahoma justice is nineteen years, while in roughly half of the states average seniority is less than ten years.

There is also extraordinary variety in the past political experiences of the justices. For instance, in many states a sizable proportion or even majority of the justices served as prosecutors before coming to the supreme court. Yet, there are selected states where none of the justices have this kind of previous political experience. Some state high courts also have many former attorneys general among their ranks, yet in most states none of the justices have this kind of previous experience. With only a handful of exceptions, almost all of the justices on these state high courts served as judges before reaching their state's supreme court. Taken together, there are clearly many interesting dimensions of variation in court structure and judge characteristics. These variations seem like tantalizing prospects for comprehensive accounts of judicial decision making.

Not surprisingly, variation among these courts is not limited to their institutional features or the personal attributes of the justices. Court dockets also exhibit some interesting differences. The basic dockets of the state supreme courts reveal huge variation in the types of cases heard across the states (see **Figure 1**). For instance, in Alaska less than 5 percent of the cases heard by that state's high court are criminal, with over 95 percent of the cases being civil. At the other extreme, over 70 percent of the cases in North Carolina were criminal with less than 30 percent devoted to civil issues. In general, state supreme courts hear more civil cases than criminal, with civil cases comprising 60 percent or more of most dockets. In a small handful of states (Arizona, Georgia, Kansas, and North Carolina), criminal cases comprise the majority of the dockets. The dramatic differences in dockets across the states would suggest that these courts play very different functional roles within their respective judicial systems.

These different functional roles become clearer when we look at the criminal and civil dockets (see **Figure 2**). North Carolina stands out as particularly interesting. Over 70 percent of this state's docket is devoted to criminal cases (see **Figure 1**). Over 90 percent of these criminal cases involve capital crimes. When considering the North Carolina high court, it is strikingly clear that the majority of this court's attention is devoted to hearing cases concerning capital crimes with almost half of these cases involving the death penalty. Contrast this with Iowa, which dedicates only 30 percent of its docket to criminal cases with none of the cases analyzed during the period of this study involving capital crimes. Several other state supreme courts (e.g., Arizona, Florida, and Mississippi) devote a huge proportion of their dockets to capital crimes, with over 50 percent of their criminal cases involving the death penalty. While some states have no death penalty (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin), there are other states that have the death penalty (e.g., Colorado, Montana, and Wyoming) yet hear few if any cases involving this issue, with less than 10 percent of the criminal cases involving capital crimes.

Figure 1
Variation in the Percentage of State Supreme Court Dockets Devoted to Criminal, Civil, and Miscellaneous Issues

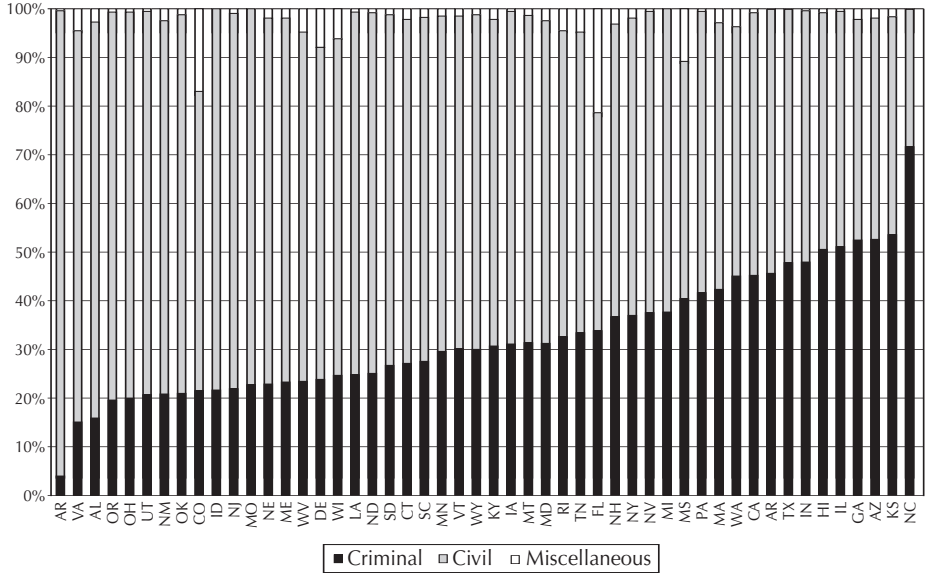
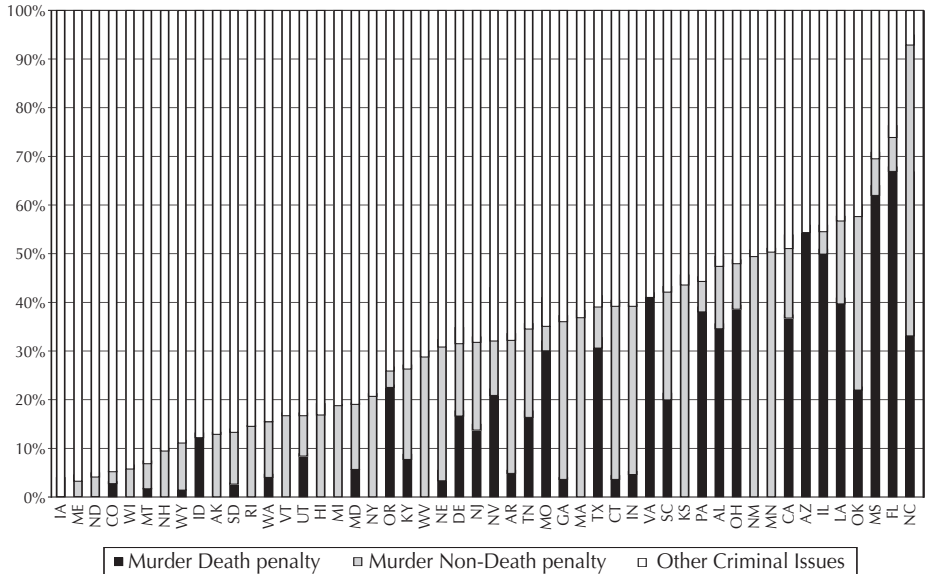
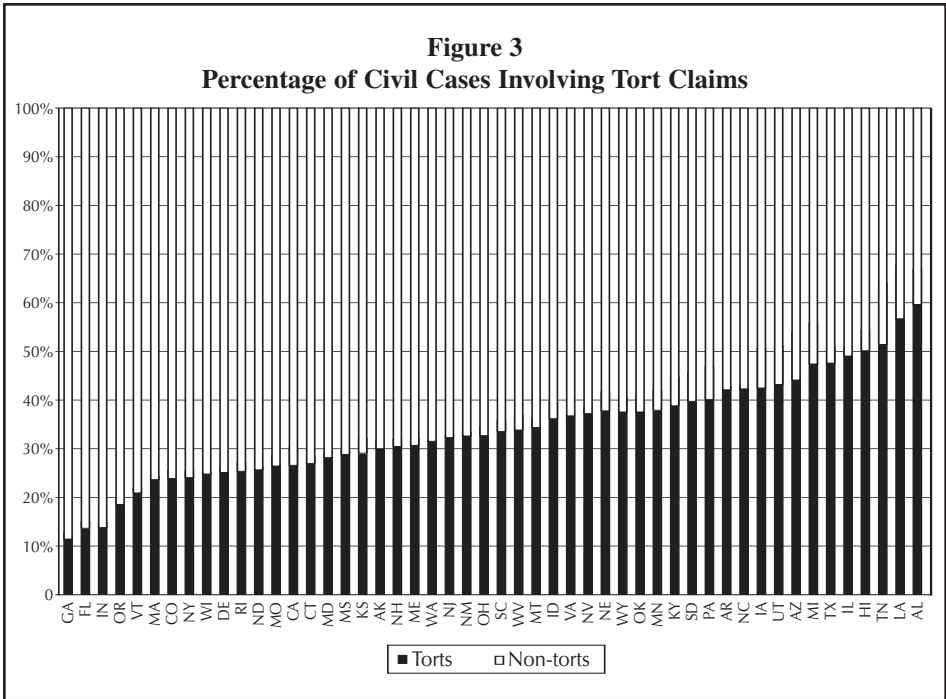


Figure 2
Percentage of Criminal Cases Involving capital Crimes

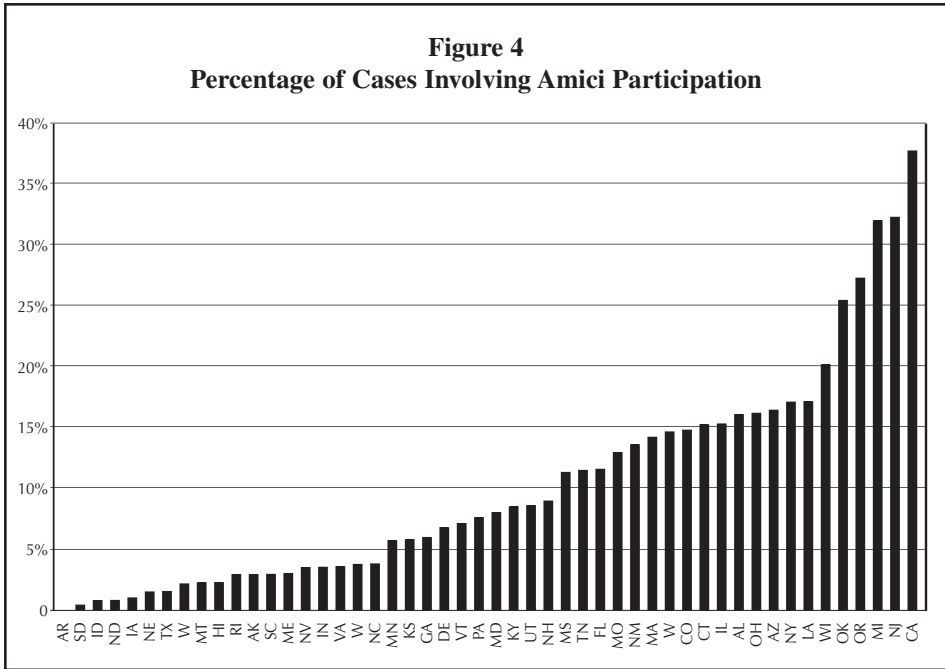




In 80 percent of the states, capital crimes constitute less than half of their criminal docket (see **Figure 2**). We can divide the states into two groups. In a small handful of states, the justices devote a substantial amount of their criminal dockets to capital crimes, with a vast majority of the states’ criminal proceedings focusing on noncapital issues.

When considering the characteristics of the civil docket, recall that there are a handful of states where the civil docket comprises over 80 percent of the caseload (e.g., Alabama, Alaska, Ohio, Oregon, and Virginia). When it comes to civil dockets, Alabama is almost as striking as North Carolina is for criminal dockets, with almost 60 percent of its total docket involving tort litigation (see **Figure 3**). Where the court in North Carolina appears overwhelmed with capital crimes, the justices in Alabama spend the majority of their time resolving disputes over jury awards. Based on these results, it would seem that the occupation of justices would be vastly different between these two states, with one court largely specializing in criminal law and the other focusing overwhelmingly on torts. Similarly, we might expect the types of interest drawn to these courts to shape, or be shaped, by the types of cases they hear, creating different political environments. Clearly, one would expect the typical stakes involved in the cases before these two courts to be very different.

One way of examining the intensity of the stakes or the interests involved in the cases brought before the court is to assess the level of amici participation before the courts (see **Figure 4**). In slightly more than a third of the states (e.g., Arkansas, Idaho, Iowa, South



Dakota, Texas, etc.), less than 5 percent of their total cases involve amici participation. In five states (California, Michigan, New Jersey, Oklahoma, and Oregon), at least one in four cases involves amici participation, in contrast to a third of the states with dockets concerning one in twenty cases with amici participation. Three categories emerge from these results: roughly half of the states have between 5 to 20 percent amici participation; roughly 40 percent of the states have relatively no amici participation; and only 10 percent of the states have very high levels of amici participation. For those interested in amici participation and the effects of this participation, the states seem like an excellent laboratory.

In both criminal and civil matters, the state supreme courts exhibit widely varying patterns of consensus and dissensus. There is a fair amount of dissensus in criminal appeals, with about 30 percent of the states failing to reach consensus in over 50 percent of their criminal cases (see **Figure 5**). Contrast this with civil cases, where approximately 80 percent of the states arrive at consensus at least half of the time (see **Figure 6**). There are tremendous differences between the highest and lowest states in both types of cases. The Michigan and Texas high courts reach unanimous outcomes in slightly more than 10 percent of their criminal cases, while Delaware's high court achieves consensus in *all* of its criminal cases. Consider civil cases. In Ohio, the state supreme court arrives at unanimous verdicts in only about one-fifth of civil cases, while 20 percent of the states achieve unanimity in over 90 percent of these cases. These findings suggest that the degree of ideological polarization varies appreciably across the types of law under consideration in the state supreme courts.

Figure 5
Percentage of Criminal Cases Decided by a Unanimous Vote

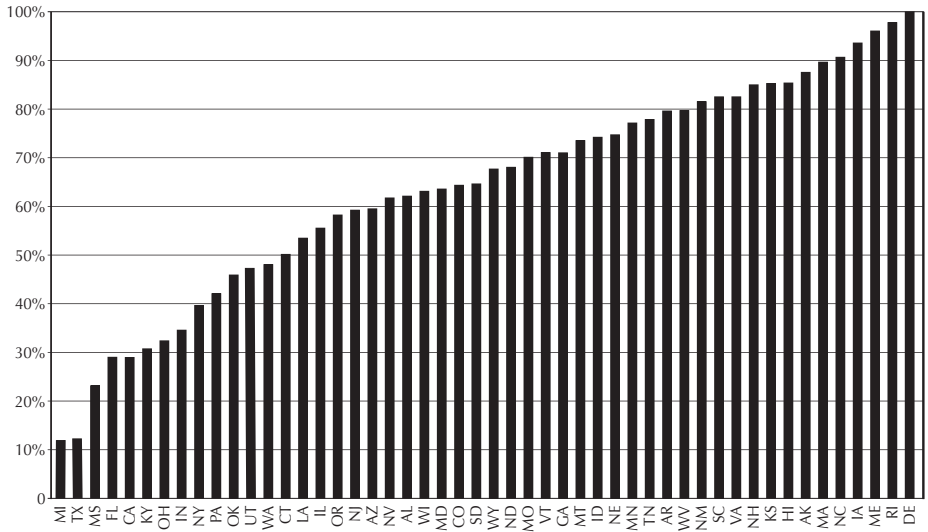
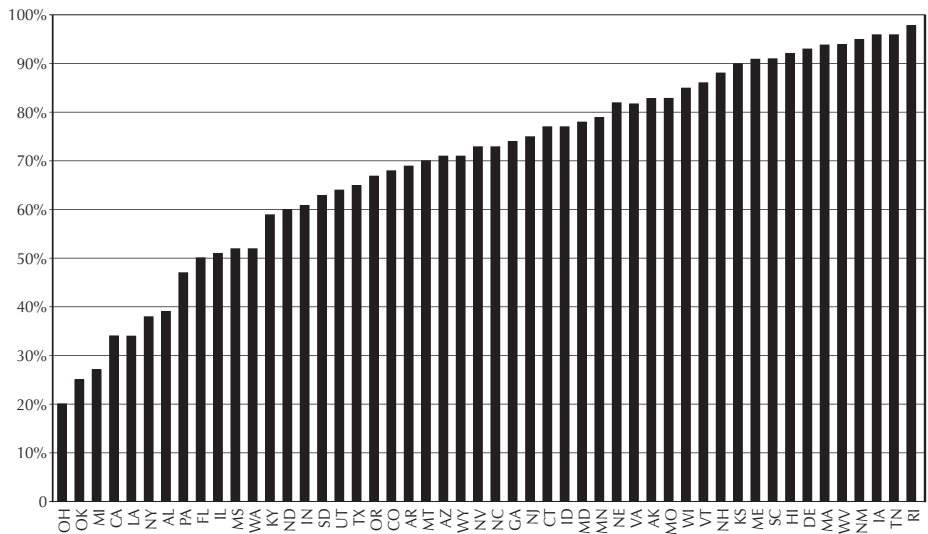
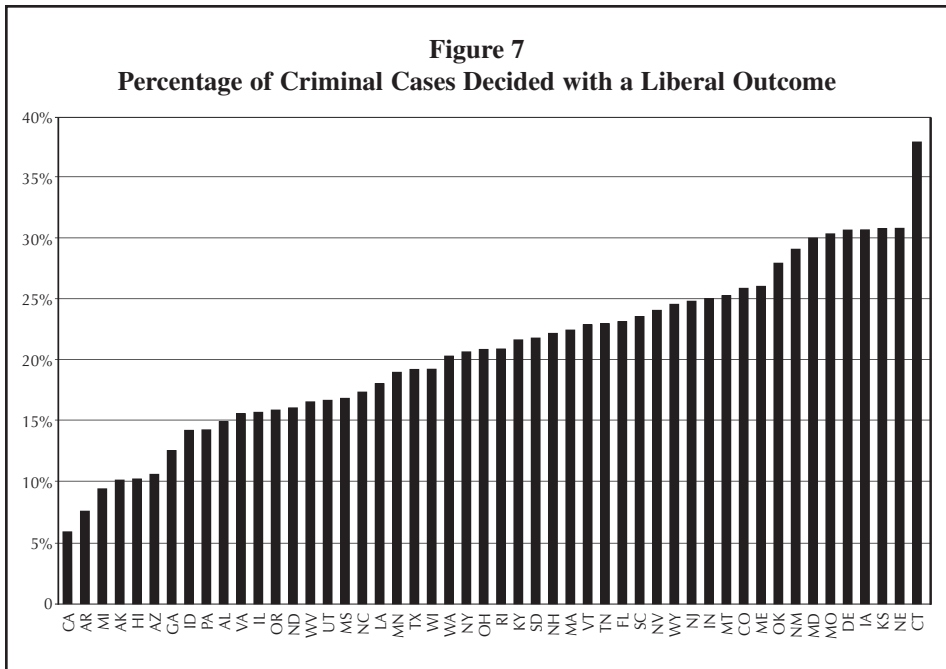


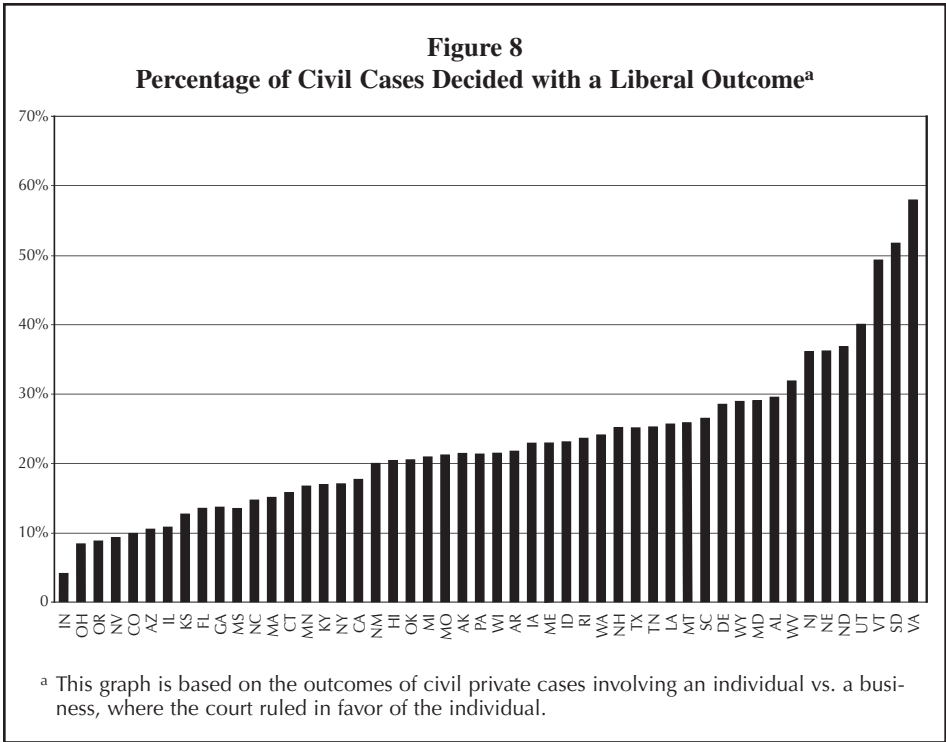
Figure 6
Percentage of Civil Cases Decided by a Unanimous Vote





The ideological direction of case outcomes also reveals some interesting patterns. The states vary tremendously in their willingness to side for the defendant in criminal cases (see **Figure 7**). In California, defendants prevail in less than 10 percent of their appeals, where in Connecticut they prevail in slightly less than 40 percent of their appeals. In civil matters, the courts upheld awards to individuals with a similarly wide difference (see **Figure 8**). In five states (Colorado, Indiana, Nevada, Ohio, and Oregon) the high courts upheld damage claims in 10 percent or less of these cases. At the other extreme, there were four states (South Dakota, Utah, Virginia, and Vermont) in which damages were upheld in 40 percent or more of these cases. Ignoring the specifics of the cases before these states, the outcomes seem to suggest that the likelihood of victory for criminal defendants or those seeking liability claims differs drastically across the fifty states.

Although justices seem to overwhelmingly participate in the majority (see **Table 3**), justice outcome behavior across the state supreme courts also exhibits a fair amount of variation. Over 85 percent of the states have justices who participate in the majority over 95 percent of the time. There are some states (i.e., Massachusetts, Michigan, Texas, etc.), however, that have justices who participate in the majority roughly 85 percent of the time. Although several factors (e.g., legal values, ideological differences, etc.) often lead justices to disagree with the majority opinion, the impetus to participate in the majority is tremendous.



Conclusions

In this essay, we have underscored the theoretical and substantive utility of these data and highlighted the considerable variation that exists across the state supreme courts. Moreover, we maintain that these data provide an excellent source from which to begin systematically evaluating the underlying microlevel processes that contribute to macrolevel patterns in judicial choice and judicial outcomes. These data allow judicial scholars to avoid a substantial data collection barrier that previously limited the comprehensive study of state supreme courts and offer judicial scholars the opportunity to investigate judicial behavior in the states' high courts extensively. We have only described the diversity and variation that exists across the state supreme courts, and we encourage scholars to join us as we use these data to embark upon the fruitful research available in studying judicial politics. The possibilities are bounteous, and there is room to develop new theories, answer new questions, and revisit old theories and old questions with new data.

In addition to their utility for the academic community, we hope and expect these data to become a useful resource for state supreme court justices and court administrators. The data provide a systematic comparative portrait of the issues state supreme courts address and the disposition of those issues. The data illustrate where consensus

Table 3
Justice Voting Behavior^a

<u>State</u>	<u>Justices Part of the Majority</u>	<u>Justices Dissent</u>	<u>Justices Did Not Participate</u>
Alabama	98.00	1.00	0.00
Alaska	97.00	2.00	1.00
Arizona	93.00	5.00	2.00
Arkansas	94.00	6.00	0.00
California	95.00	5.00	1.00
Colorado	98.00	2.00	0.00
Connecticut	100.00	0.00	0.00
Delaware	96.00	3.00	0.00
Florida	98.00	2.00	0.00
Georgia	99.00	1.00	0.00
Hawaii	99.00	1.00	0.00
Idaho	93.00	6.00	1.00
Illinois	98.00	2.00	0.00
Indiana	98.00	2.00	0.00
Iowa	98.00	2.00	1.00
Kansas	92.00	7.00	2.00
Kentucky	90.00	8.00	2.00
Louisiana	88.00	7.00	6.00
Maine	98.00	2.00	0.00
Maryland	84.00	8.00	8.00
Massachusetts	85.00	14.00	1.00
Michigan	94.00	4.00	2.00
Minnesota	95.00	4.00	0.00
Mississippi	97.00	3.00	1.00
Missouri	0.00	0.00	0.00
Montana	97.00	3.00	0.00
Nebraska	93.00	5.00	2.00
Nevada	99.00	1.00	0.00
New Hampshire	96.00	2.00	2.00
New Jersey	90.00	7.00	3.00
New Mexico	100.00	0.00	0.00
New York	96.00	3.00	1.00
North Carolina	96.00	3.00	1.00
North Dakota	95.00	3.00	2.00
Ohio	91.00	8.00	1.00
Oklahoma	89.00	11.00	0.00
Oregon	95.00	4.00	1.00
Pennsylvania	87.00	8.00	5.00
Rhode Island	97.00	2.00	2.00
South Carolina	97.00	2.00	1.00
South Dakota	92.00	5.00	3.00
Tennessee	99.00	1.00	0.00
Texas	88.00	11.00	1.00
Utah	97.00	2.00	1.00
Vermont	99.00	1.00	0.00
Virginia	97.00	3.00	0.00
Washington	91.00	9.00	0.00
West Virginia	89.00	6.00	5.00
Wisconsin	96.00	3.00	1.00
Wyoming	99.00	1.00	0.00

^a These values are percentages.

or disagreement prevail across the states and across areas of law. In combination, the state supreme court archive will allow jurists and court administrators to place their courts within the matrix of the federal system and systematically compare their work with that of others.

The state supreme court data covering years 1995 and 1996 became available in November 2001. Subsequent release dates and other pertinent information concerning the project are posted at <http://www.ruf.rice.edu/~pbrace/statecourt/>. **jsj**

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