"Haves" Versus "Have Nots" in State Supreme Courts: Allocating Docket Space and Wins in Power Asymmetric Cases

Paul Brace Melinda Gann Hall

This article evaluates two basic issues about dockets and case outcomes in American appellate courts. First, what determines the extent to which a court devotes its docket to civil cases involving asymmetrical power relationships between litigants? Second, in civil cases in which the "have-nots" are pitted against the "haves," which forces determine the extent to which courts favor the less privileged? To answer these questions, we identify power asymmetric civil cases and the size of each court's docket by examining all 6,750 cases decided in state supreme courts in 1996. Results reveal that contextual factors are formidable in shaping both agenda space and win rates in civil disputes involving conflicts between advantaged and disadvantaged litigants. Institutional features of supreme courts and state court systems, the supply of legal resources, and public preferences all emerge as critical influences on the willingness of the states' highest courts to decide have/have not conflicts and on the ultimate disposition of these cases. In sum, a comprehensive understanding of the ways in which courts treat cases involving the disadvantaged and, more broadly, function as agents of redistributive change cannot be achieved without focusing beyond the ideological preferences of judges and the skill of the litigants.

In this article, we ask two basic questions about court dockets and case outcomes. First, we ask which forces influence how much of court dockets involve asymmetrical power relationships between litigants. Second, in civil cases where the "have-nots" are pitted against the "haves," what forces shape the extent to which courts favor the less privileged?

Direct all correspondence to Paul Brace, Department of Political Science, Rice University, Houston, Texas 77005-1892 (e-mail: pbrace@rice.edu) or to Melinda Gann Hall, Department of Political Science, Michigan State University, East Lansing, Michigan 48824-1032 (e-mail: hallme@msu.edu).

Order of authorship is alphabetical. Earlier versions of this article were presented at the 2000 American Political Science Association Meeting in Atlanta, Georgia; the 2001 Meeting of the International Political Science Association Research Committee on Comparative Judicial Studies, Cape Town, South Africa; and the 2001 Meeting of the Law and Society Association, Budapest, Hungary. We wish to thank James Gibson for his thoughtful suggestions, Laura Langer for her suggestions and help with data, and Kevin Arceneaux, Thom Blalock, Chris Bonneau, Kellie Sims-Butler, and Martin Pressley for excellent research assistance on this project. This research was partly supported by the National Science Foundation Grants SBR9617190, SES9911082, SES9911166. The authors retain sole responsibility for any errors.

Law & Society Review, Volume 35, Number 2 (2001)

The context within which we examine these important questions is state supreme courts. Basically, we argue that some of the confusion among scholars about the ability of courts to serve as agents of redistributive change is the direct result of the case study approach dominating the literature. As it stands, and though there are obvious exceptions, much of the existing work focuses upon single institutions, an approach that precludes a direct systematic evaluation of the effects of institutional arrangements and other contextual forces on agenda-setting and decisionmaking in courts. A comparative cross-sectional research design based in the American states overcomes these limitations.

Generally, and consistently with previous research, we posit that the most fundamental functions of courts are structured by the circumstances under which the courts operate, in addition to the preferences of the judges deciding the cases and the law governing the disputes. If we identify these forces and provide a strategy for testing their effects in comprehensive models, we will be able to reconcile previous contradictory findings and construct more satisfactory theories of judicial politics. In this particular case, we can improve our understanding of the ways in which courts allocate space on their dockets among competing groups and allocate resources through their decisions, producing a more refined understanding of the essential role of courts in the political marketplace.

In this endeavor, we assume that the factors determining the proportion of cases on dockets involving power asymmetries also determine win rates for the disadvantaged in these cases. This assumption is well grounded in the literature. Both scholars and sitting judges have observed the close connection between deciding to decide and final outcomes. For example, Justice William Brennan (1983: 177) described the agenda-setting process and decision process as "inseparable" and "inextricably linked." Similarly, scholars have noted that "the factors that govern the selection of cases and the construction of the annual agenda are closely tied to the factors that explain the justices' decisions on the merits of the cases" (Pacelle 1995: 251). Thus, in our discussion, we consider both the agenda stage and decision stage of the judicial process, examining the effects of the same set of independent variables at both stages.

Finally, we acknowledge that our analysis is not comprehensive; we are not examining patterns of winning and losing among all possible combinations of litigants or across all categories of disputes. Instead, we begin with the less ambitious goal of delineating, at the aggregate level, which factors seemingly account for the win rates of disadvantaged litigants (i.e., individuals) over their more privileged rivals (i.e., organizations) in civil disputes, and which factors contribute to these cases being on dockets in the first place. This approach excludes an analysis of such impor-

tant types of power asymmetric cases as criminal disputes (which by their very nature involve unequal litigants) and civil disputes between organizational litigants and the state. Nonetheless, from our somewhat narrow focus, we believe that we can begin to develop a picture of the extent to which state high courts provide a forum to raise issues derived from asymmetrical power relationships and the ways in which courts can and do serve as agents of redistributive change. Indeed, given the incredible diversity in state litigation, even in criminal cases alone, attempting to develop general models that are both fully specified and parsimonious is daunting.

Access and Outcomes in Courts

Courts standing as a barrier against majority tyranny and as protector of the downtrodden is one of the most popular images in American politics. Beginning with the very foundations of the polity, and continuing today, the symbol of Justice, blinded to all that would detract from an objective weighing of evidence, serves as a powerful representation of the goal of "equal justice under law." Indeed, the expectation that all citizens, regardless of circumstances, should receive their "day in court" is firmly grounded in underlying beliefs in judicial impartiality and open access to the judicial process. Though highly symbolic, such expectations often are cast in American political dialogue as incontrovertible propositions.

Whether courts actually fulfill this mighty charge is another matter. Although the general question about the ability of courts to protect the disadvantaged—or, at a minimum, not to serve as a tool of the advantaged—is highly complex and involves normative issues that cannot be directly addressed by empirical research, we examine agenda-setting in the judiciary and win rates in court as two aspects of this question amenable to scientific scrutiny.

Agenda-Setting in the Judiciary

One of the most clearly established facts in political science is that the manner in which agendas are structured has profound consequences for decisions subsequently reached by political institutions. Among other things, agendas restrict and order alternatives and determine which groups have opportunities to pursue their interests and goals. In other words, granting or limiting access to political processes is "not substantively neutral" (Pacelle 1995: 254).

In the context of courts, scholars have devoted considerable attention to ascertaining how decisions about access to the judicial process are reached. In these endeavors, the most extensively

studied institution is the United States Supreme Court, with a general focus on the specific decision calculus of the individual justices. While countless studies have described the general structure of the agenda of the nation's highest court both in any given term and over extended periods of time, systematic analysis has attempted to ascertain the conditions under which the Court and individual justices decide to grant certiorari.

This work is theoretically rich and methodologically diverse, and has been quite successful in identifying a variety of factors that contribute to the justices' willingness to grant discretionary review. First and foremost among these factors are the policy preferences of the justices (e.g., Provine 1980; Rohde & Spaeth 1976; Schubert 1962). Similarly, the Solicitor General as petitioning party (e.g., Salokar 1992; Tanenhaus et al. 1963), questions of national significance (e.g., Tanenhaus et al. 1963), conflicts among the circuits (e.g., Caldeira & Wright 1988; Perry 1991), the desire to avoid problematic cases (e.g., Tanenhaus et al. 1963) and the presence of experienced lawyers with expertise in such litigation (Caldeira & Wright 1988; McGuire & Caldeira 1993) all serve to influence these choices. In relatively recent accounts of deciding to decide (McGuire & Caldeira 1993), amicus curiae participation at the access stage was found to promote the granting of plenary review. Essentially, these briefs, which may argue *against* grants of certiorari by the Court, serve as an important signal to the justices that the case presents issues beyond the interests of the immediate litigants. As Caldeira and Wright (1988: 111) explain, "[t]he presence of amici during case selection communicates to the Supreme Court information about the constellation of interests involved, and this information . . . is both valued and heeded by the justices and their clerks."

These studies, though not directly focused upon the connection between the agenda-setting process and the functions of courts, clearly have significant implications for understanding agendas more broadly. Studies at the aggregate level (Pacelle 1991, 1995), which attempt to explain changes over time in the overall policy interests of the Court, draw this connection more directly. Not surprisingly, Pacelle (1995: 251) finds that "the factors that govern the selection of cases and the construction of the annual agenda are closely tied to the factors that explain the justices' decisions on the merits of the cases." As would be expected, the political predilections of the justices are particularly important.

To some extent, and not discounting the creative thought and plain hard work that have gone into this research, these important studies are possible because of the wealth of data readily available about the Supreme Court and the relatively small numbers of decisions issued per term. Actual certiorari applications, the individual justices' docket books, formal dissents to denials of review, and the decisions themselves are among the documents

providing important clues about circumstances under which the justices grant or deny applications for writs of certiorari. The United States Supreme Court Data Base also is an invaluable tool. Given these sources and the relatively light caseload, describing the Court's docket and conducing microlevel analyses are not insurmountable tasks.

In courts below the United States Supreme Court, the situation is different. These lower courts process relatively huge caseloads, and collecting data about their operations is daunting. Consequently, much of the work below the Supreme Court, though scant, has been at the macrolevel and has focused particularly upon describing the content of dockets, identifying the connections between external political forces and court dockets, and considering the implications of differential patterns of usage of the judicial process for the political neutrality of courts. In other words, for a variety of reasons the focus in lower court research has been on courts as institutions rather than on judges as individual decisionmakers. Of course, it is also the case that many lower courts do not have discretionary dockets, rendering the certiorari literature irrelevant.

Within this body of research, however small, contradictions appear. In studies of the dockets of state trial courts (e.g., Grossman et al. 1982; Wanner 1974), the United States Courts of Appeals (e.g., Harrington & Ward 1995), and state supreme courts (e.g., Atkins & Glick 1976; Kagan et al. 1977), scholars differ over the issue of whether access to litigation is limited for individuals relative to other types of litigants (e.g., organizations, businesses, or governments). Despite these inconsistencies among studies, all have at least suggested that the types of issues composing courts' dockets are connected to the social, economic, and political forces surrounding these courts.

Perhaps the most theoretically provocative and methodologically influential of these studies are those by Wanner (1974) on civil trial courts and by Atkins and Glick (1976) and Kagan et al. (1977) on state supreme courts. Wanner (1974) generated a great deal of scholarly debate when he documented that in civil litigation in several large American cities, certain groups tended to appear more frequently than others and pressed claims that were not representative. More broadly, Wanner (1974: 438) argued that this pattern of differential usage of the courts, particularly by organizations suing individuals, precludes an "untroubled belief in the neutrality of civil trial courts."

At the appellate level, Kagan et al. (1977) described changes in the types of issues on dockets and the kinds of litigants present in litigation in sixteen state supreme courts from 1870 through 1970. Generally, they determined that changes over time have made state supreme courts more open to disadvantaged litigants. Overall, state supreme courts experienced declines in debt col-

lection and real property cases, with increases in torts, criminal and other public law matters (e.g., taxation, licensing, zoning), and family law. As they summarize, "[M]any of the newly popular areas, despite the great cost of appellate litigation, touch on the troubles of people further down the social and economic scale than those involved in most commercial and real estate cases" (Kagan et al. 1977: 156). Like Atkins and Glick (1976), they suggest that these changes are the result of changes in structure, socioeconomic factors, legal doctrine, and judicial attitudes.

Using a cross-sectional approach, Atkins and Glick (1976) established that the issue composition of state supreme court dockets in 1966–67 was closely connected to the social, economic, and political environments of the states. Broad categories of cases (i.e., criminal, economic private litigation, non-economic private litigation, regulation of the economy), examined as the percentage of the overall caseload, were the function of professionalism, competition, industrialization, affluence, and judicial structure. From the perspective of access, this work indicates that such decisions have a strong contextual component. More broadly, this work suggests that fundamental functions of courts might depend in part upon conditions external to the judges. This important article serves as a model for our analysis below.

Who Wins in Court

Ascertaining who wins in court once cases have been docketed, and concomitantly whether certain types of litigants have an inherent advantage over others, constitutes an important challenge for judicial politics scholars. In a seminal article, Marc Galanter (1974; see also 1975) argued that litigants with status, power, and resources ("haves") and frequent opportunities to use the courts ("repeat players") have an advantage over parties with fewer resources ("have-nots") and usually only single interactions with the judicial process ("one shotters"). Galanter further asserted that because of the obvious and seemingly intractable advantages that certain types of litigants have over others, the legal system is limited as a means of redistributive change. As mentioned, similar claims about the biased nature of the litigation process were offered independently yet almost simultaneously by Wanner (1974, 1975).

Galanter's contentions about power asymmetries and the limits of courts as instruments of change have served as cornerstones in the study of American trial courts. Galanter also has stimulated important scholarship seeking empirical confirmation of these assertions in a variety of appellate courts.

Overall, studies of litigant success in appellate courts yielded highly inconsistent results. Studies of state supreme courts have produced the contradictory assertions that "haves" do not fair

particularly better than "have-nots" (Wheeler et al. 1987); that governmental "haves" enjoy an advantage, while private "haves" do not (Farole 1999); and that "haves" obtain virtually no advantage when less-privileged litigants are supported by amici curiae (Songer et al. 2000). Work on the United States Courts of Appeals (Songer & Sheehan 1992; Songer et al. 1999) detected a connection between litigant resources and winning on appeal, though Atkins (1993) failed to find support for party capability theory as an explanation for appeal mobilization in the English court system. Finally, Sheehan et al. (1992) determined that litigant success rates in the United States Supreme Court largely are the result of the ideological composition of the Court rather than resource differentials between direct parties.

At a minimum, these studies taken together call into question the generalizability across institutions of Galanter's propositions about who wins in the judiciary. However, they also suggest a more intriguing possibility—that institutional features of courts and other contextual factors might be playing a significant role in structuring outcomes in the judicial process. Different results may be obtained in studies of different institutions simply because institutional arrangements and other contextual forces, which cannot be examined directly in case studies, are structuring the results. By identifying these factors, a general theory can be constructed of courts as distributors of wealth and power and as instruments of change. Thus we proceed with a modest attempt toward that goal.[1]

Our most important theoretical argument is consistent with Epp's (1998) intriguing hypothesis that the rights revolutions in the United States, Canada, India, and Britain largely were the result of enhanced resources for legal mobilization rather than the increasingly liberal tendencies of judges, cultures, or constitutions. In other words, according to Epp (1998) advances in rights were achieved because of changes in political and legal context that provided an improved support structure for rights litigation. Thus, we expect similar effects on agenda-setting and case outcomes in state supreme courts.

Research Strategy

To begin to address questions related to resource asymmetries between litigants, we examine all cases decided in the high courts of 48 states in 1996. We exclude from the analysis

[1] There is a second compelling reason to reexamine Galanter's assertions within the context of state supreme courts. State supreme court studies evaluating Galanter's propositions have included small subsets of states only (Farole 1999; Songer et al. 2000; Wheeler 1987), and there has yet to be a systematic examination of state supreme courts that is national in scope or that takes into account variations in institutional arrangements, or other contextual factors, in shaping outcomes.

Oklahoma and Texas, which have two separate courts of last resort with separate civil and criminal dockets. Because of the fundamentally different nature of their dockets, comparisons with other states are problematic.

These data are drawn from a preliminary version of the State Supreme Court Data Project, a multiuser database sponsored by the National Science Foundation and conducted jointly at Rice University and Michigan State University. This initial version of the database consists of cases decided in the 52 state courts of last resort in 1996 that were issued by signed opinions or by per curiam opinions exceeding five paragraphs.

In this endeavor, we have categorized the cases into five mutually exclusive and collectively exhaustive subject areas, based upon past research. These categories are (1) criminal, (2) civil cases not involving government litigants (civil-private), (3) civil cases involving governments (civil-government), (4) juvenile cases, and (5) nonadversarial matters. In our current inquiry concerning agenda-setting and outcomes with these data, we limit our consideration to civil-private cases that present conflicts between parties with resource asymmetries (i.e., have and have-not litigants). Consistent with previous work, we assume that natural persons relative to businesses and organizations constitute "have-nots," while businesses and organizations constitute "haves," relatively speaking. Our interest thus centers on cases in which natural persons confront private organizations or businesses. As mentioned earlier, this approach falls short of a comprehensive assessment of power asymmetric cases but serves as a reasonable and practical beginning for attacking the issue at the state level.

Additionally, for each of the cases, we have identified whether or not amicus curiae participants were involved.[2] Because of vastly different methods for reporting this information among the states, it is not possible for us to code from the opinions if the petitioner, the respondent, or both, received amicus support, nor could we classify the specific nature of each amicus participant. Instead, we can identify only when amicus curiae briefs were, or were not, filed in these cases.

Nonetheless, we focus exclusively upon cases in which such participation is present, for two primary reasons. First, disputes

[2] The types of underdog civil private cases and their frequencies are illustrated in the table below:

Civil Private Case Type	No Amici Filed (%)	Amici Filed (%)
Domestic relations	16.16	0.79
Estates	4.26	0.25
Contracts	38.87	4.51
Torts	49.93	6.79
Total	87.11	12.89

attracting amici should be relatively important cases coming before state supreme courts, and we wish to be able to observe the decisions of courts when dealing with broader matters of public policy. In many civil cases, these important policy implications are not present, even when resource asymmetries are involved. Thus we rely only upon those cases attracting amicus participation, since such activity is "tacit recognition that matters before the justices have vast social, political, and economic ramifications—far beyond the interest of the immediate parties" (Caldeira & Wright 1990: 783). Stated somewhat differently, Barker (1967: 43) has observed that the "activity of third parties in sponsoring litigation has made the judicial forum much more accessible to individuals who raise issues of broad-scale significance." On a related matter, scholars have documented that amicus participation in state supreme courts has increased substantially over the past few decades, as has the diversity of groups involved (Comparato 1999; Epstein 1994; Peterson 1999; Songer & Kuersten 1995); thus, we should have a sufficient number of cases available for sound analysis.

Second, we wish to be able to compare the results of this work to that on the United States Supreme Court, the most extensively studied judicial institution. To make reasonable comparisons, we need to be sure that the cases we are analyzing in the states are not routine matters of little public consequence, cases that would never appear on the docket of the nation's highest court. We are particularly interested in assessing whether factors beyond the ideology of the justices, especially contextual forces, play an important role in agenda-setting and outcomes in courts broadly considered.

It is interesting to note that the states vary significantly in the proportion of cases attracting amicus curiae participation. In 1996, power asymmetric cases in a handful of states almost never involved amici, while as much as 22% of the disputes in other states involved this type of nonlitigant involvement.

Regarding the dependent variables, our interest is with two fundamental aspects of civil-private cases. First, we assess the extent to which courts devote docket space to have/have-not cases as a proportion of their total dockets. This factor indicates, in a comparative fashion, the degree of attention these courts devote to have/have-not conflicts and serve to illustrate the relative access have-nots enjoy in these courts. Second, we consider the proportion of cases in which have-nots actually win, in order to illustrate factors shaping outcomes in have/have-not conflicts. Of the cases decided in 1996 in the 48 states under consideration, 1,244 of 6,750 state supreme court decisions (18.4%) were civil-private cases presenting litigant asymmetries.

Generally, we posit that variations in the proportion of a court's docket devoted to these cases and the overall win rates of

have-nots will be a direct function of institutional arrangements structuring the state supreme court and broader legal system, a variety of conditions in the external political environment, and the preferences of the justices themselves. The description and source of each of the variables used in this analysis are presented in Appendix I. Ideally, we would also take into account the state legal environment. However, given the wide range of issues involved in these cases, no single summary variable is readily available or easily constructed.

More specifically, we hypothesize that variations in levels of professionalism in the state supreme court and the broader legal system will play an important role in the extent to which the supreme court hears have/have-not cases and in justices' overall propensities to rule in favor of the disadvantaged. In this regard, we follow the lead of Atkins and Glick (1976), who offered similar hypotheses about agenda-setting in state supreme courts.

Generally speaking, *supreme court professionalism* should give state supreme courts greater latitude in shaping their dockets and in reviewing the information related to the cases before them. More highly professionalized state supreme courts will have greater liberty to consider have/have-not cases than courts with fewer staff resources or other support. Conversely, we expect *lower court professionalism* to work in the opposite manner. When lower courts have greater resources, we expect to find more cases resolved without reversible error, thus producing fewer cases for state high courts to consider.

To measure *supreme court professionalism* and *lower court professionalism*, we utilize factor analysis to summarize a variety of individual variables defining these concepts (see Atkins & Glick 1976). We hypothesize that *supreme court professionalism* and *lower court professionalism* constitute two distinct dimensions of state legal resources. While *supreme court professionalism* measures the degree to which the state supreme court has adequate institutional support to structure and manage its docket, *lower court professionalism* measures the extent to which the state judicial system as a whole has sufficient resources. Following this reasoning, a highly professional supreme court presiding over an amateurish lower court system would have a great many cases available to consider and greater latitude necessary to evaluate them. Alternatively, an amateurish supreme court situated atop a relatively professionalized appellate court system would have neither the supply of cases nor the latitude to consider them if they did exist. Taken together, we expect basic institutional resources within the judiciary to affect the scope of supreme court agendas and the supply of cases available for those agendas.

To develop indices to assess these institutional hypotheses empirically, we use confirmatory factor analysis to detect the presence of dimensionality in these data, as described in Appen-

dix II. We believe the following variables, in fitting with our hypotheses, will load on separate dimensions. State *supreme court professionalism* should consist of the number of clerks available to assist the Chief Justice and all other justices in their routine tasks, the amount of remuneration received by the justices (standardized against average employee earnings of other justice system employees), the number of justices relative to population, and overall docket size. *Lower court professionalism* should consist of the size of the central law staff relative to the population, general trial court salaries relative to average employee earnings, the number of full-time equivalent justice system employees relative to state population, total judicial and legal expenditures as a percentage of the total justice system budget, and the number of judges per state population.

The confirmatory factor analyses reveal that these variables load on two orthogonal dimensions, as indicated previously. The correlation between the two dimensions is negligible and statistically indistinguishable from zero ($r = 0.092$, $p = 0.543$). Thus, they are tapping fundamentally distinct dimensions and thus are included in the models as separate variables. As mentioned, Appendix II describes this process and the individual variables in detail.

We specifically note that our measures of professionalism are an alternative to the usual approach of measuring discretion as the presence or absence of an intermediate appellate court. The reasons are both theoretical and practical. Theoretically, the presence or absence of an intermediate appellate court is but a crude indicator (relative to our *supreme court professionalism* measure) that does not satisfactorily encompass the wide array of forces working to affect the capacity of the states' highest courts. Practically, intermediate appellate court is correlated with method of judicial selection, and including both variables in the equations would interject collinearity. Nonetheless, we ran the models with both variables and determined that intermediate appellate court is not significant.

Regarding other variables affecting dockets and win rates, have/have-not cases hold the potential for populist appeal, and we would expect *elected judges* to be sensitive to this. Thus we hypothesize that electoral incentives should make elected state supreme courts more likely to hear these cases and more likely to decide in favor of have-not litigants than their counterparts in appointed state supreme courts. To test this effect, we include in our models a dummy variable (*elected judges*) coded one if justices are retained in partisan or nonpartisan elections, or zero otherwise.

The ideological preferences of the judges are held to be a dominant influence in many accounts of judicial decisionmaking. We consider both *average court ideology* and the *standard devia-*

tion of court ideology in the current analysis. First, we expect that more liberal courts will be more likely to place have-not cases on their dockets and to decide in favor of these litigants, ceteris paribus. Second, we temper this expectation by the degree of ideological polarity or fragmentation there is on the court. When the dispersion of ideology is greater (that is, when court standard deviations of ideology are greater), we would expect greater discord, and this should reduce the likelihood that these types of cases are heard, or decided in a manner favorable to have-nots. Both measures use the ideology scores developed in Brace, Langer, and Hall (2000).

We also hypothesize that broader societal forces will influence docket access and outcomes in have/have-not cases. In a penetrating analysis of the expansion of rights globally, Epp (1998) argues convincingly that much of this revolution was the result of the mobilization of legal resources rather than the increasingly liberal tendencies of judges, cultures, or constitutions. This argument fits well with our interests because it seems entirely reasonable to expect that variations in the plight of have-nots in the states could be partially or wholly due to the availability or mobilization of legal resources. When legal resources are extremely costly or otherwise out of reach, individual litigants would be placed at a disadvantage relative to business, government, or other organizations with comparatively deep pockets. We hypothesize that *lawyers per capita* (i.e., the number of attorneys per 1,000 state population) will vary positively with the presence of have-not cases on dockets and favorable outcomes. Moreover, we expect that greater numbers of *legal interest organizations,* measured using the data collected and described by Gray and Lowery (1998), likewise will promote greater docket attention to have/have-not litigation and greater win rates for disadvantaged litigants.

We expect that public opinion also will play a role in shaping attention to cases presenting resource asymmetries and the success of the disadvantaged in the states. In their seminal work Erikson et al. (1993) demonstrated the pervasive connection of public ideology to state policy choices. In this inquiry, we hypothesize that attention to have-not cases and outcomes in their favor will vary positively as a function of ideological liberalism. We employ Erikson et al.'s (1993) survey-based measure of state ideology to evaluate this hypothesis (*EWM state ideology*).

Our final concern is with *state population*. We expect states with large populations to produce a greater diversity of cases in general and more have/have-not conflicts specifically when compared with less-populated states. Even if state supreme courts were otherwise inclined to hear and decide in favor of have-not litigants, they ultimately are constrained by the supply of such cases available for consideration. Moreover, as larger populations

produce greater numbers of cases, "have-nots" have better cases to choose for appeal and thus may enjoy greater opportunities to land on the high court docket and win. Thus, we include a measure of each state's population. For a convenient summary of all of the variables, we describe each variable and their data sources in Appendix II.

Models of Access and Outcomes in State Supreme Courts

As noted in the foregoing discussion, our focus is limited to civil-private cases in which amicus curiae participation was present. The inclusion of non-amicus cases in our analysis produced notably weak results, as should be expected. As mentioned, cases that fail to attract outside attention are less likely to contain important matters of public policy and also are less likely to present legitimate controversies or claims. Thus, patterns in the non-amici cases are not as easily explained as those in more publicly salient cases since the forces driving this litigation may be largely idiosyncratic rather than systematic. Indeed, as Tables 1 and 2 reveal, when we direct attention to cases with amicus participation, extremely strong and significant patterns emerge in our models, and the variables in the models provide a remarkable account of both have-not presence on dockets and win rates.[3]

Turning first to results concerning dockets presented in Table 1, our model produces an adjusted R^2 of 0.72, indicating that

[3] The results of including non-*amicus* cases in our analysis are presented below:
Civil-Private Cases without *Amici*

	Percentage of Underdog Cases on Docket			Percentage of Underdog Wins		
Variables	Coefficient	Standard Error	*t*	Coefficient	Standard Error	*t*
Court professionalism index	−0.037	0.021	−1.707	0.069	0.023	**2.995**
Judicial structure index	0.045	0.043	1.052	−0.029	0.080	−0.362
Elected judges	0.042	0.028	1.472	0.050	0.051	0.981
Average court ideology	0.000	0.001	0.138	−0.001	0.002	−0.656
Standard deviation of court ideology	0.003	0.002	1.641	−0.002	0.003	−0.594
Lawyers per capita	−0.018	0.016	−1.094	0.002	0.029	0.066
Legal interest organizations	0.013	0.014	0.905	0.026	0.044	0.588
EWM state ideology	0.003	0.002	1.331	0.008	0.005	1.514
State population	0.000001	0.000004	0.209	−0.000007	0.000005	−1.316
Constant	0.182	0.096	1.893	0.470	0.220	**2.134**
N	43			43		
F (9, 33)	1.270			3.000		
Prob > *F*	0.289			0.011		
R-squared	0.236			0.294		

NOTE: The results yield few statistically significant relationships, and the overall explanatory power of the models is weak. Results in **bold** are significant at or below the 0.05 level using a two-tailed hypothesis test.

our model can account for almost three-quarters of the variation in docket space devoted to have-not cases across the states. With only one exception (legal interest organizations) all of the variables in the model are statistically significant at the 0.05 level or

Table 1. Docket Space in State Supreme Courts for Civil-Private Disputes Presenting Resource Asymmetries (in cases accompanied by amici only)

Dependent Variable = Proportion of Have-Not Cases on Docket				
Explanatory Variable	Coefficient	Standard Error	*t*	% +/− from 1 S.D. change
Supreme court professionalism	0.062	0.013	4.949***	6.0
Lower court professionalism	−0.093	0.029	−3.187***	−9.3
Elected judges	0.034	0.019	1.772**	3.3
Average court ideology	−0.001	0.001	−1.766**	−1.6
Standard deviation of court ideology	−0.003	0.001	−2.866***	−1.7
Lawyers per capita	0.040	0.011	3.603***	10.8
Legal interest organizations	−0.009	0.008	−1.096NS	−0.8
EWM state ideology	0.003	0.002	2.011**	2.3
State population	0.00000492	2.05E-06	2.398**	2.7
Constant	0.068	0.052	1.287	
N	43			
F (9, 33)	29.25			
Prob > *F*	0			
R-squared	0.78			
Adjusted *R*-squared	0.72			

*** Significant at 0.01.
** Significant at 0.05.
* Significant at 0.10.
NS, Not significant.
All tests are one-tailed.

Table 2. Win Rates in State Supreme Courts for Disadvantaged Litigants in Civil-Private Disputes (in cases accompanied by amici only)

Dependent Variable = Proportion of Have-Not Victories				
Explanatory Variable	Coefficient	Standard Error	*t*	% +/− from 1 S.D. Change
Supreme court professionalism	0.042	0.011	3.779***	4.0
Lower court professionalism	−0.058	0.021	−2.785***	−5.8
Elected judges	0.022	0.022	0.977NS	2.1
Average court ideology	−0.001	0.000	−2.558***	−1.9
Standard deviation of court ideology	−0.001	0.001	−1.571*	−1.0
Lawyers per capita	0.021	0.009	2.519***	5.8
Legal interest organizations	−0.004	0.009	−0.409NS	−0.3
EWM state ideology	0.003	0.001	2.43***	2.5
State population	0.0000032	0.000002	1.795**	1.6
Constant	0.082	0.039	2.078	
N	43			
F (9, 33)	4.33			
Prob > *F*	0.0009			
R-squared	0.64			
Adjusted *R*-squared	0.55			

*** Significant at 0.01.
** Significant at 0.05.
*Significant at 0.10.
NS, Not significant.
All tests are one-tailed.

below. Of the eight significant variables, seven are signed in the anticipated direction.

Among the significant influences, the variable with the most substantive impact is *lawyers per capita.* The results indicate that a one standard deviation increase in the supply of lawyers produces 10.8% more agenda space devoted to these have-not cases in state supreme courts. The index of *lower court professionalization* exerts the second largest impact on have-not cases on state supreme court dockets. These results indicate that a one standard deviation increase in lower appellate professionalization would reduce the percentage of state supreme court docket space devoted to these cases by 9.3%. The *supreme court professionalization* index exerts an opposite effect, as expected, and produces the third largest substantive impact of the variables considered in our analysis. An increase of supreme court professionalization by one standard deviation is estimated to increase the amount of docket space devoted to these have-not cases by 6%. As expected, *elected judges* were more inclined to hear these cases than their nonelected counterparts. Courts with elected judges devoted an estimated 3.3% more of their dockets to these have/have-not conflicts. *State population* similarly was consequential, with a one standard deviation shift associated with 2.7% greater docket presence. It is also noteworthy that *EWM state ideology* exerted a significant and substantively consequential influence on the percentage of these cases that are placed on the dockets. A one standard deviation shift in the liberal direction is estimated to result in 2.3% more of state supreme court docket space. Finally, ideological fragmentation on courts, captured by the standard deviation in the ideology scores, was estimated to have a modest effect on dockets; a one standard deviation shift in the direction of greater fragmentation would reduce the presence of these cases on court dockets by 1.7%.

Only two variables in this model did not perform as expected. *Legal interest organizations* did not exert a statistically significant influence on dockets. We find this result surprising and difficult to explain. Perhaps it is simply the case that litigation is driven by the supply of attorneys rather than the presence or absence of groups organized to take publicly salient issues to court.

Similarly, *average court ideology* was statistically significant at the 0.05 level but was signed opposite of what was expected, although the substantive impact was quite modest. Regarding ideology, it seems likely that the simple have/have-not classification implemented here may overlook some of the important characteristics of the cases that have not been considered. For instance, it simply may be the case that when private parties sue each other, even when resource asymmetries are present between the litigants, the liberal outcome does not always favor the individual. Consider, for example, the case of individuals (have-nots) suing

labor unions (haves). In this particular kind of case, depending upon the facts, the liberal outcome may fall with the labor union over the individual. Similarly, consider abortion protestors as individuals suing private abortion clinics, where the liberal outcome (depending upon the issue) might be for the clinic. Clearly, we need additional work to be able to take into account these case-specific matters, which may be producing results about the importance of the justices' ideological preferences that are counterintuitive.

Overall, it is clear from Table 1 that this model provides a comprehensive account of variations in docket space devoted to cases involving resource asymmetries, at least when amici curiae briefs were filed. This model also highlights the very fundamental influence of institutional and extracourt factors in shaping dockets. Clearly, the supply of lawyers and the professionalism of the appellate court system play a large, even dominant, role in structuring court dockets in this area. Beyond this, the ideological liberalism of state publics also exerted a statistically and substantively important impact on the attention given to these cases. Together, these results indicate that dockets are more contextually than court driven, and narrowly looking at a single court and its agenda would certainly lead one to exaggerate the influence of intracourt factors.

Court-level factors are also important. A supreme court's professionalism, whether the justices are elected, and the degree of ideological polarity on the court, all exerted significant, expected, and substantively meaningful influence on court attention to these cases between the haves and the have-nots.

As Table 2 illustrates, the results concerning outcomes in these civil-private cases are similarly quite impressive. Overall, this model generates a respectable adjusted R^2 of 0.55. Five of the nine variables are significant at or below 0.05 and signed in the anticipated direction, one is significant but signed incorrectly, and three variables do not achieve statistical significance.

Among the significant variables, *lawyers per capita* and *lower court professionalism* exerted the largest substantive influence. A one standard deviation change in either produces an estimated change in win rates of 5.8%. *Supreme court professionalism* ranks third in substantive importance, with a one standard deviation increase estimated to produce a 4% increase in have-not win rates in these types of cases. *State public opinion liberalism* follows, with a one standard deviation increase estimated to produce an increase in win rates of 2.5%. As previously noted, *average court ideology* is estimated to exert a negative but significant influence on win rates, with a one standard deviation increase in liberalism estimated to reduce have-not win rates by 1.9%. Finally, *state population* was positively related to win rates, with a one standard deviation increase associated with an increase in have-not win

rates. *Elected judges, legal interest organizations,* and *standard deviation in court ideology* all failed to achieve statistical significance in the analyses of outcomes of these have/have-not conflicts.

As was the case with variations in have-not docket space in these civil-private cases, it is notable how much influence context exerts on case outcomes. *Lawyers per capita* and *lower court professionalism* again emerge as the dominant influences in accounting for interstate variations. Also as before, *supreme court professionalism* is the third most important variable. Both in terms of shaping dockets and in shaping outcomes that favor disadvantaged litigants, these variables are consistent and important influences. It is also notable that have-not outcomes vary positively with public opinion liberalism and state population, as expected.

Conclusion

The results of this inquiry reveal that have/have-not conflicts in state supreme courts are multifaceted. On one hand, our ability to produce a general understanding of the factors influencing these conflicts across all categories of cases was very limited. In cases without amicus participation, our model of docket access and win rates for less-privileged litigants was not wholly satisfactory and indicates that much more is going on in those cases than is accounted for by our basic model. On the other hand, our model provides a statistically comprehensive account of agenda and outcome variation in civil-private cases where amici were filed, and the results of this specific analysis are both intriguing and informative.

In civil-private conflicts where amici were filed, the legal context plays an overwhelming and decisive role in shaping both access to dockets and win rates. The supply of lawyers, more than any other variable, emerges as critical in accounting for have-nots getting to court and how these litigants fare once there. It seems evident that the availability of legal resources plays a huge role in shaping the supply of have-not cases and their subsequent appearance on state supreme court dockets. When lawyers are relatively plentiful and comparatively less costly, more have-nots reach state supreme courts, and they are more likely to win. This finding suggests that interstate variations in the supply of lawyers are playing a decisive role in increasing or mitigating asymmetries of power before state high courts, at least in publicly important cases.

An equally interesting finding concerns the substantial influence of lower court professionalism. How states fund and administer their lower court systems plays an important role in shaping the presence or absence of have-not cases in state supreme courts and subsequent outcomes in those cases. Combined with the substantial effects of lawyers per capita, it is clear that in this cate-

gory of cases at least, the extracourt legal environment is playing a critical role in which types of cases state supreme courts consider, and how they consider them.

The effects of public opinion are also notable and were significant in both agenda and outcome models for civil-private cases where amici were filed. While it is tempting to suggest that state supreme courts are responding to public liberalism, we should be cautious. More liberal citizens may also be more inclined, on average, to pursue litigation against governments, businesses, or other organizations.

The influence of court ideology was not as strong as we expected. Court liberalism either was not significant or was signed in the wrong direction. Although ideological fragmentation did emerge as influential in some instances, ideology overall was of very modest explanatory power. As noted in our previous discussion, this could result from failure to classify these have/have not cases without detailed attention to their ideological nuances. Quite clearly, future studies need to take into consideration these vital details.

We noted at the outset of this inquiry that ascertaining who wins in court once cases have been docketed, and concomitantly whether certain types of litigants have an inherent advantage over others, has constituted an important challenge for judicial politics scholars. Following Galanter's (1974, 1975) claims about bias in the judicial system, research has produced somewhat contradictory results concerning the role of the judges' ideology and resource differentials. In some ways, the findings presented here highlight some of the sources of inconsistency in findings. Our results vary dramatically when non-amicus cases are considered. It seems very evident that different influences are in operation across categories of cases, and any broad generalizations are perilous.

Beyond this, however, using the American states for our analysis capitalizes on important variations in judicial institutions and in external political contexts that have been overlooked in past studies. The results presented in this article reveal that numerous contextual factors are formidable and decisive influences in civil-private have/have-not cases. Institutional features of courts and overall court systems, the supply of legal resources, and the attitudes of the public all emerge as critical influences on the disposition of have/have not conflicts. In light of this, we feel it is abundantly clear that a comprehensive and satisfactory understanding of power asymmetries in court and the ways in which courts address these cases will never be achieved without considering factors beyond the ideological preferences of the decisionmakers or the skills of the litigants. In fact, making generalizations based upon studies of single courts, like the United

States Supreme Court, or even the United States Courts of Appeals, would lead to inferences that, quite simply, are wrong.

Of course, this study represents only the most modest beginning toward understanding the functions of courts as agents of redistributive change. We are hopeful that our groundwork and the State Supreme Court Data Project will encourage others to continue with this important line of inquiry.

References

Atkins, Burton M. (1993) "Alternative Models of Appeal Mobilization in Judicial Hierarchies," 37 *American J. of Political Science* 780–98.

Atkins, Burton M., & Henry R. Glick (1974) "Formal Judicial Recruitment and State Supreme Court Decisions," 2 *American Politics Quart.* 427–49.

——— (1976) "Environmental and Structural Variables as Determinants of Issues in State Courts of Last Resort," 20 *American J. of Political Science* 97–115.

Barker, Lucius (1967) "Third Parties in Litigation: A Systemic View of the Judicial Function," 29 *J. of Politics,* February, 41–69.

Brace, Paul, & Melinda Gann Hall (1995) "Studying Courts Comparatively: The View from the American States," 48 *Political Research Quart.* 5–29.

——— (2000)

Brennan, William J., Jr. (1983) "Some Thoughts on the Supreme Court's Workload," 66 *Judicature* 230–34.

Caldeira, Gregory A., & John R. Wright (1988) "Organized Interests and Agenda-Setting in the U.S. Supreme Court," 82 *American Political Science Rev.* December, 1109–27.

——— (1990) "Amici Curiae before the Supreme Court: Who Participates, When, and How Much?" 52 *J. of Politics,* August, 782–806.

Canon, Bradley C., & Dean Jaros (1970) "External Variables, Institutional Structure, and Dissent on State Supreme Courts," 4 *Polity* 185–200.

Champagne, Anthony, & Judith Haydel, eds. (1993) *Judicial Reform in the States.* Lanham, MD: Univ. Press of America.

Comparato, Scott (1999) "Interest Groups, *Amicus* Briefs, and State Supreme Courts: The Importance of Institutions," 20 *American Rev. of Politics,* Summer, 181–200.

Epp, Charles R. (1998) *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective.* Chicago: Univ. of Chicago Press.

Epstein, Lee (1990) "Interest Groups and the Courts," in J. B. Gates & C. A. Johnson, eds., *The American Courts: A Critical Assessment.* Washington, DC: CQ Press.

——— (1994) "Exploring the Participation of Organized Interests in State Court Litigation," 47 *Political Research Quart.* 335–52.

Erickson, Robert S., Gerald C. Wright & John P. McIver (1993) *Statehouse Democracy: Public Opinion and Policy in the American States.* New York: Cambridge Univ. Press.

Farole, Donald J., Jr. (1998) *Interest Groups and Judicial Federalism: Organizational Litigation in State Judiciaries.* Westport, CT: Praeger.

——— (1999) "Reexamining Litigant Success in State Supreme Courts," 33 *Law & Society Review* 1043–57.

Galanter, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Rev.* 95–160.

——— (1975) Afterword, "Explaining Litigation," 9 *Law & Society Review* 347–68.

Glick, Henry R., & George W. Pruet, Jr. (1986) "Dissent in State Supreme Courts: Patterns and Correlates of Conflict," In S. Goldman & C. Lamb,

eds., *Judicial Conflict and Consensus: Behavioral Studies of American Appellate Courts.* Lexington, KY: Univ. Press of Kentucky.

Gray, Virginia, & David Lowery (1998) "Representational Concentration and Interest Community Size: A Population Ecology Interpretation," 51 *Political Research Quart.* 919–44.

Grossman, Joel B., Herbert M. Kritzer, Kristin Bumiller, Austin Sarat, Stephen McDougal & Richard Miller (1982) "Dimensions of Institutional Participation: Who Uses the Courts, and How?" 44 *J. of Politics,* February, 86–114.

Harrington, Christine B., & Daniel S. Ward (1995) "Patterns of Appellate Litigation," in L. Epstein, ed., *Contemplating Courts.* Washington, DC: Congressional Quarterly Press.

Kagen, Robert, Bliss Cartwright, Lawrence M. Friedman & Stanton Wheeler (1977) "The Business of State Supreme Courts, 1870–1970," 30 *Stanford Law Review* 121–56.

McGuire, Kevin T., & Gregory A. Caldeira (1993) "Lawyers, Organized Interests, and the Law of Obscenity: Agenda-Setting in the Supreme Court," 89 *American Political Science Rev.,* September, 717–26.

Murphy, Walter F. (1964) *Elements of Judicial Strategy.* Chicago: Univ. of Chicago Press.

O'Connor, Karen (1980) *Women's Organizations' Use of the Courts.* Lexington, MA: Lexington Books.

Pacelle, Richard L., Jr. (1991) *The Transformation of the Supreme Court's Agenda: From the New Deal to the Reagan Administration.* Boulder, CO: Westview Press.

——— (1995) "The Dynamics and Determinants of Agenda Change in the Rehnquist Court," in L. Epstein, ed., *Contemplating Courts.* Washington, DC: Congressional Quarterly Press.

Perry, H. W., Jr. (1991) *Deciding to Decide: Agenda-Setting in the United States Supreme Court.* Cambridge, MA: Harvard Univ. Press.

Peterson, Anne (1999) "Examining the Role of Representational Bias Between Interest Groups and State Supreme Courts," 20 *American Rev. of Politics,* Summer, 201–12.

Provine, Doris Marie (1980) *Case Selection in the United States Supreme Court.* Chicago: Univ. of Chicago Press.

Rohde, David W., & Harold J. Spaeth (1976) *Supreme Court Decision Making.* San Francisco: W. H. Freeman & Company.

Salokar, Rebecca Mae (1992) *The Solicitor General: The Politics of Law.* Philadelphia: Temple Univ. Press.

Schubert, Glendon (1962) "Policy Without Law: An Extension of the Certiorari Game," 14 *Stanford Law Rev.* 284–327.

Segal, Jeffrey A. (1988) "Amicus Briefs by the Solicitor General during the Warren and Burger Courts," 41 *Western Political Quart.,* March, 134–44.

Sheehan, Reginald S., William Mishler & Donald R. Songer (1992) "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court," 86 *American Political Science Rev.* 464–71.

Songer, Donald R., & Ashlyn Kuersten (1995) "The Success of Amici in State Supreme Courts," 48 *Political Research Quart.* 31–42.

Songer, Donald R., & Reginald Sheehan (1992) "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals," 36 *American J. of Political Science* 235–58.

Songer, Donald R., Ashlyn Kuersten & Erin Kaheny (2000) "Why the Haves Don't Always Come Out Ahead: Repeat Players Meet *Amici Curiae* for the Disadvantaged," 55 *Political Research Quart.* 537–56.

Songer, Donald R., Reginald S. Sheehan & Susan Brodie Haire (1999) "Do the 'Haves' Come Out Ahead over Time? Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925–1988," 33 *Law & Society Rev.* 811–32.

Spriggs, James F., II, & Paul J. Wahlbeck (1997) "*Amicus Curiae* and the Role of Information at the Supreme Court," 50 *Political Research Quart.,* June, 365–86.

Tanenhaus, Joseph, Marvin Schick, Matthew Muraskin & Daniel Rosen (1963) "The Supreme Court's Certiorari Jurisdiction: Cue Theory," in G. Schubert, ed., *Judicial Decision Making.* New York: Free Press.

Wanner, Craig (1974) "The Public Ordering of Private Relations: Part One: Initiating Civil Cases in Urban Trial Courts," 8 *Law & Society Rev.* 421–40.

Wheeler, Stanton, Bliss Cartwright, Robert A. Kagan & Lawrence M. Friedman (1987) "Do the 'Haves' Come Out Ahead? Winning and Losing in State Supreme Courts, 1870–1970," 21 *Law & Society Rev.* 403–45.

Appendix I
Description of Variables

Variable Name	Variable Description	Source	Mean	Standard Deviation	Range	*N*
Have-not Civil-Private Petitioners with Amici	Proportion of asymmetrical civil-private cases where have-not petitioner had *amicus curiae* participation	Brace-Hall NSF Data	0.072	0.111	0.571	50
Winning Have-not Civil-Private Petitioners with Amici	Proportion of asymmetrical civil-private cases with *amicus curiae* participation where have-not petitioner won	Brace-Hall NSF Data	0.039	0.077	0.429	49
Proportion Have-not Civil-Private Cases	Proportion of civil-private cases with have-not litigant	Brace-Hall NSF Data	0.183	0.078	0.339	50
Proportion Winning Have-not Civil-Private Cases	Proportion of civil-private cases where have-not litigant won	Brace-Hall NSF Data	0.345	0.142	0.675	48
Supreme Court Professionalism	Court professionalism factor scores	See Appendix II	0.000	0.976	6.078	47
Lower Court Professionalism	Structural professionalism factor scores	See Appendix II	0.000	1.000	7.665	46
Elected Judges	Method by which state chooses supreme court justices (1 = elected, 0 = nonelected). Both partisan and nonpartisan elected justices are treated as elected, while merit selected justices are treated as nonelected	Gray & Jacobs (1996: 168)	NA	NA	NA	50
Average Court Ideology	Mean Court Ideology	Brace et al. (2000)	40.911	16.008	70.470	50
Standard Deviation of Court Ideology	Dispersion of Court Ideology	Brace et al. (2000)	18.095	8.649	33.420	50
Lawyers Per Capita	Lawyers per 1,000 citizens	NCSC	2.939	2.721	20.275	50
Legal Interest Organizations	Proportion of state lobby groups that are legal organizations	Gray & Lowery (1998)	2.106	1.027	5.669	50
EWM State Ideology	State ideology (−100 to 100; higher number indicates more liberal)	Erikson, Wright & McIver (1993: 16)	−15.435	7.597	27.200	48
State Population	State pop. 1,000s in 1990	Census	4,962.180	5,459.634	29,304.000	50

Appendix II
Description of Method Used to Generate the Supreme Court Professionalism Index and the Lower Court Professionalism Index

The supreme court professionalism index and lower court professionalism index were compiled by confirmatory factor analyses in which both were defined a priori. Specifically, we hypothesized that these two theoretical dimensions would consist of the following variables:

Supreme Court Professionalism:

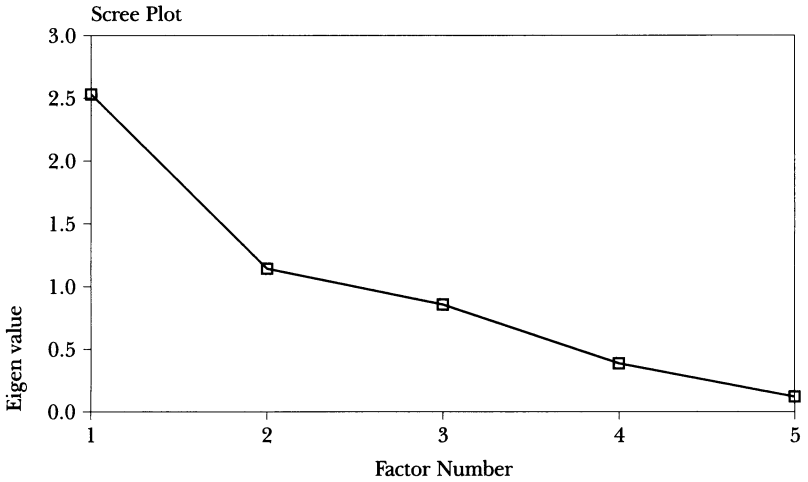
- Number of clerks for the Chief Justice
- Number of clerks for each justice
- Difference between justice salary and average employee earnings
- Number of authorized supreme court justices per 1,000 state residents
- Docket size

Lower Court Professionalism:

- Central law staff per 1,000 state residents
- Difference between general trial court judge salary and average employee earnings
- Number of full-time equivalent justice system employees per 1,000 residents
- Judicial and legal expenditures as percentage of total justice system budget
- Number of total judges per 1,000 residents

Generally, supreme court professionalism affects the resources the court can bring to bear in handling cases, affecting their discretion and latitude. Lower court professionalism, alternatively, affects the supply of cases. If the appellate courts are highly professionalized, presumably they are dispensing with the have/have-not cases in a more satisfactory manner (i.e., fewer appeals) and there are thus fewer cases for the supreme court to consider.

The confirmatory factor analyses produced single factor solutions for both, as expected, and scores were produced for each state using these factor analyses. For the supreme court professionalism index, the scree plot indicated that only a one-factor solution existed.



Supreme Court Professionalism Factor Analysis:

The pattern matrix below demonstrates that these variables loaded as expected. Number of clerks and salary are positively associated with professionalism, while number of justices assigned to the court and docket size are negatively associated with professionalism.

Factor Matrix

	Factor 1
Clerks for Chief Justice	0.969
Clerks for justices	0.897
SC Salary—employee earnings	0.561
Authorized justices per 1,000	–0.297
Docket Size	–3.366E-02

Extraction Method: maximum likelihood.
1 factor extracted. 6 iterations required.

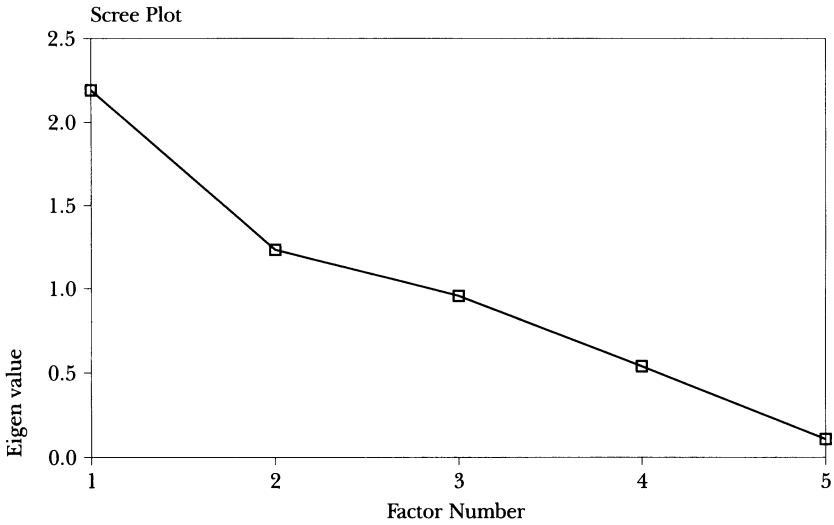
The fit statistics demonstrate that this model performs better than the null that no single factor solution exists.

Goodness-of-fit Test

Chi-square	df	Sig.
15.035	5	0.010

Lower Court Professionalism Factor Analysis:

A similar story exists for lower court professionalism. The scree plot suggests a single factor solution:



The variables also load as expected on the pattern matrix. Number of employees, judges, central law staff, general court judge salary, and legal system budget are all positively related to lower court professionalism.

Factor Matrix	Factor 1
Full-time equivalent justice system employees per 1,000	0.999
Judges per 1,000 citizens	0.863
Central law staff per 1,000	0.406
General trial court salary—Ave. employee earnings	0.249
Judicial and legal expenditures/total justice budget	1.060E-02

Extraction Method: maximum likelihood.
1 factor extracted. 13 iterations required.

And, as with supreme court professionalism, the fit statistics demonstrate a single factor solution is better than the null model.

Goodness-of-fit Test

Chi-square	df	Sig.
14.725	5	0.012

https://doi.org/10.2307/3185407 Published online by Cambridge University Press