

ABSTRACT

PAYNTER, SHARON RENEE. Judicial Performance Evaluation: Policy Diffusion Across the American States. (Under the direction of Richard C. Kearney.)

Tensions between independence and accountability, two hallmarks of the American judicial branch, create a responsibility, perhaps even an obligation, for officers of the court to perform efficiently, effectively, and to undergo periodic performance review. Creating performance evaluation programs holding courts accountable from both individual and organizational perspectives is challenging. It is difficult to evaluate judges and preserve the critical independence needed to decide cases freely, based only on the law. An innovative program called judicial performance evaluation (JPE) may change that. Despite its promise, the program has only been adopted by twenty states. Why those states? What forces compel actors to pursue JPE programs?

The characteristics leading to policy diffusion in the American states are evaluated by considering how and when JPE programs have been adopted by state institutional bodies. The effects of legislative professionalization and method of judicial selection have the greatest impact on increasing the likelihood of the policy adoption. However, despite anecdotal evidence and findings from extant studies in other policy areas, political ideology, and geographic proximity are variables not significantly related to JPE diffusion.

This study blends extant literature from social science including work from scholars of public administration, public policy, judicial administration, and court reform. The initial contribution of this dissertation is to help researchers understand why JPE may appeal to some states and not others. However, its primary purpose is to shed light on the

intersection of these fields and to study policy diffusion using event history analysis.

This study re-opens the door for court administration and reform literature to join mainstream public administration studies.

Judicial Performance Evaluation: Policy Diffusion across the American States

by
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A dissertation submitted to the Graduate Faculty of
North Carolina State University
in partial fulfillment of the
requirements for the Degree of
Doctor of Philosophy

Public Administration

Raleigh, North Carolina

2008

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Dedication

For my grandparents, Robert & Bertha Abbott and Arthur & Helen Paynter, who always believed their grandchildren could achieve lofty goals, even finishing a dissertation.

Biography

Sharon Paynter earned an undergraduate degree in biology from the University of North Carolina at Chapel Hill in 1994. After college, she was employed as a social worker, teacher, and executive director of a human service non-profit in Henderson, North Carolina. In 2001 she began graduate studies at UNC-CH where she received a Master of Public Administration from its School of Government. She earned a Master of Legal Administration from the Sturm College of Law at the University of Denver in 2004.

Ms. Paynter began doctoral studies at North Carolina State University in 2005. She worked as a Teaching Assistant in the Department of Political Science and Public Administration from 2005 until 2008, taught research methods and introduction to nonprofits courses for undergraduate students, and worked as a Research Assistant for the North Carolina Bar Association Pilot Project on Judicial Performance Evaluation and for the Better Courts Project sponsored by the North Carolina Center for Voter Education. With Maureen Berner, she was a co-principal investigator on funded research including the North Carolina Hunger Project, work focused on understanding the characteristics of hunger in an effort to inform stakeholders in the policy community about issues of poverty. In the fall of 2008, she began a postdoctoral fellowship at the Taubman Center for Public Policy at Brown University.

Her research interests are especially focused on inter-sectorial and intergovernmental interactions including state comparative policy using legislative and judicial institutions. She also works in other policy areas aimed at systemic social issues such as poverty and hunger.

Acknowledgements

I am humbled by the number of people who contributed their time, energy, and thoughtfulness toward my PhD. Thinking back over this past year causes me to remember moments – both funny and poignant – when committee members, other faculty, friends, or family helped me stay on track, uncover solutions, or realize that I should just take a day off. Finding the right words to express my gratitude is unusually difficult.

My committee members have most influenced the substance and organization of my dissertation. Dr. Maureen Berner, Dr. Dennis Daley, Dr. David Garson, and Dr. Richard Kearney have inspired me to follow in their footsteps of productive, careful scholarship. Their comments and subject matter expertise contributed to a better product. Together they challenged me to think critically and in ways that will benefit my professional life for many years. However, their individual contributions are equally important.

Dr. Berner debated variables, literature, and modeling with me. She also helped me stay focused with random, though frequent, e-mail reminders to work on the dissertation and not the ten other projects I wanted to pay attention to. I am indebted to her for teaching me the first things I ever knew about regression and research. Her helpful comments and suggestions for changes, deletions, questions for clarification and ways to reorganize my dissertation a more linear, logical way made me a better writer.

Because of her I always think three times before using “that” in a sentence! More importantly, Dr. Berner has been a supportive role model, mentor, and friend.

Through Dr. Daley’s class I gained confidence, knowledge, and an understanding of the theoretical foundation on which my dissertation lies. In the dissertation process, Dr. Daley challenged me to think critically and comprehensively. Though I resisted, I am grateful he asked me to create a table comparing the major theories I considered for this research. That was one of the single most difficult, and rewarding, experiences of the process.

Dr. Garson taught me to think like an academic. Without his methods classes and *StatNotes* I would have been lost. I especially appreciate the patience with which Dr. Garson led me through learning event history analysis.

Dr. Kearney was both patient and supportive through my dissertation. I am thankful for his leadership as chair of my committee and his imprint on my professional character. He tolerated discussions over half-conceived ideas that sometimes panned out but more often did not. That he managed to suppress laughter on the day I decided to consider game theory and formal modeling is a wonder. He gave me the latitude to explore those, and other, ideas on my own so that I understood why an approach was not right for this study. In the process he was an excellent teacher. I also learned from him that I need to think long-term and to have fun along the way. His leadership made the process of writing a dissertation pleasant, and most certainly, fulfilling. I am deeply grateful for his support, dedication, and mentorship.

Many other people helped me in the process of studying state policy. I will not attempt to name each individually but want to highlight a few whose efforts were above the call of duty. Jordan Singer at the Institute for the Advancement of the American Legal System at the University of Denver gave me invaluable background on judicial performance evaluation and the “state of things” in various JPE states. State JPE leaders such as Larry Cohn, Aaron Conklin, Jane Howell, and William Raftery at the National Center for State Courts, tolerated many questions whose answers expanded my knowledge on the subject of JPE. Michele Hayslett, the data librarian at NCSU, is an unbelievable resource for graduate students. Her meticulous explanation of the U.S. Census data and willingness to help me find the data for this dissertation helped ensure I could complete my study.

Without my friends and classmates I would have never gotten through this who awed and inspired me. They also made me laugh. I also appreciate Kristin, who helped with finalizing the theory chapter. I could have never finished without the spot edits Stephanie contributed over instant messenger. Thanks Rob, Todd, Chris, and Stan for all the study sessions (and the nonsense that sometimes came out of them!).

Willow and Maria are the best! I could never ask for more loyal or supportive friends. Willow patiently stuck with me through coursework, conference papers, this dissertation, and everyday life. She was always ready with a kind word, insight on useful articles for my lit review, ways to re-conceptualize hypotheses, or ideas on different interpretations. Maria inspired me to work hard and believe in myself and occasionally

reminds me that change is stressful – even good change. She, Tom, Marshall, and Chad made me laugh and reminded me to play. Thanks guys!

My family has supported me through all the projects, school, and other events of my life. My parents, Arthur and Sandra, believed in me, gave me the resources and confidence to pursue big goals, and made sure that I had every opportunity to be successful. My brother, Brian, and his family, Sarah and Kaitlin, have been equally supportive, loving, and committed my happiness. You are all very special parts of my life. And, on this last day I worked on my dissertation, I'm thankful for Jack who interjected some excitement into the monotony of formatting (and reformatting) page numbers by being born!

And, for putting up with me during the final and difficult phases of writing, I'm grateful that Rob made sure I remembered to take a break, have fun, and just get done already!

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CHAPTER I: Introduction

At least since early in the first century ancient Greek philosophers have pondered fundamental questions about morality and the responsibilities of government. Following the teachings of Socrates and Plato, Juvenal, a first century Roman poet, penned the phrase “*Quis custodiet ipsos custodes*” translated most often as “Who watches the watchmen?” (Winstedt, 1899; Sosin, 2000). Juvenal raises an interesting question about whose responsibility it is to hold public officials accountable.

Academics often study accountability in the United States by looking at different practices found in states across the nation. Comparative state policy studies analyze motivation, communication, time, tendencies toward emulation, and even spatial characteristics in an effort to shed light on why actors in the public realm behave the way they do. As a result of these studies, we know that policies are *implemented* differently according to issue area, geography, stakeholder, available resources, and a myriad of other factors. However, the *process of adoption* generally results from of a narrower set of characteristics including the identifiable and controllable factors contributing to state policy decisions that have emerged from both theory and empirical study (Berry & Berry, 1990; Mintrom, 1997; Moe, 1990; Ostrum, 1990; Sabatier, 1988). My study focuses on this process known as “diffusion of innovation.”

Among other topics, the focus in state comparative policy can include discovering the conduits through which information is transmitted (Huff, Lutz, & Srivastava, 1988) or can be extended to consider patterns of emulation (Krmenc, 1988). Using a review of

court reform and administration literature as well as that of public administration and policy, I consider state policy adoption within the context of the judicial administration. By examining the many factors affecting state court systems, I identify the characteristics that positively influence whether state legislators will mandate performance evaluations for judges. In the process, I contribute to our understanding of the dynamics of cross-state policy diffusion.

Overview of Study Design and Research Questions

Ten hypotheses, divided into four categories, are included in this study. I consider how legislators are motivated by public opinion, electoral competition, and citizen ideology. My models also incorporate the effects of resource availability and constraint through variables like state fiscal health and court system budgets, as well as institutional variables like legislative professionalization.

In addition, the literature suggests the presence or absence of other policies can have implications for the likelihood that a state will emulate predecessors by making a specific adoption decision (Mahan & Peterson, 1985). I investigate that notion through an in-depth analysis of the presence or absence of merit selection systems for filling judicial vacancies. This variable, and these policies, are especially salient to this study because the way a judge gets his or her job often determines how long, and under what circumstances, he or she can keep it. Legislators in states that use non-merit judicial selection processes may be differently inclined toward judicial performance evaluation than those states using merit selection. Citizens residing in the states where judges have

life tenure may have no other legal remedy for and less investment in evaluating judges. Because only legislators can vote for merit selection laws, the presence of this policy may positively correlate with the likelihood that a state will adopt Judicial Performance Evaluation (JPE).

Finally, to consider whether distance matters, as some literature suggests (e.g., Berry & Berry, 1990; Mintrom, 1997; Walker, 1969), I include variables that measure geographic proximity between states with JPE programs and those that have yet to adopt them. There appears to be a regional diffusion pattern with JPE programs. After a few years of existence a pattern of adoption begins to emerge linking programs in states with new JPE programs to neighboring states which also have JPE programs. However, to date no one has tested this variable to determine whether this is anecdotal or if geography has a significant effect on adoption of the program.

The decision to adopt a program or policy is not the result of a single act; rather, adoption decisions are better characterized as “processes” (Rogers, 2003: 169) initiated by a number of players over time. JPE is an example of a policy that incorporates temporal elements of normative factors as well as multiple actors. Like most policies related to personnel reform (dating back before the Pendleton act) there are normative or moral justifications as well as politics or management factors contributing to adoption choices. Overlooking evolutionary or developmental aspects of policy adoption tells an incomplete story that does accurately represent how the actual process ultimately impacted the outcome. Thus, this research accounts for environment factors, varied players, and longitudinal elements to understand how and why states adopted JPE.

Using diffusion research applied in other policy and public administration venues as guides for my theoretical and methodological approach, I contribute to the body of existing literature on comparative state policy and expand the scope of the field to include the judiciary. Because decisions to adopt public policies are often generated as a response to some stimulus, or to use a phrase familiar to scholars of public policy, as the result of a focusing event (Baumgartner & Jones, 1993), I complement diffusion theory with ideas from neo-institutional scholars. The norms and values that describe the court system become context for how and why diffusion occurs, and for explaining how actors within both the legislative and judicial branches perceive the issue. Finally, like the many diffusion studies that precede this, I include the effects of time.

My study is about policy-making at the state level. A thorough grounding in the issues, rules in use, pressures exerted by key stakeholder groups, and context of state judiciaries is critical to encapsulate the environmental factors contributing to legislative action regulating some functions of court administration. However, the reader is cautioned to remember that the hypotheses investigated here are devoted to uncovering characteristics that trigger legislative adoption. I include illustrations of the process in state court systems as a new venue to apply diffusion theory. Nonetheless, my research is not about policy adoption by individual courts or state judiciaries. Those are questions for future research.

Given that this diffusion study is about state policies, and not specifically about court reform, the reader might inquire why I spend so much time explaining and discussing courts specifically. Courts offer a rich laboratory for comparative state policy

study. Though districts in the federal judiciary are generally homogenized, the state court systems vary widely in organizational structure, rules in use, resources available, and in other practical administrative areas. So the courts can provide a way to study how actors in a public policy environment work to serve citizens. Political scientists and public administration scholars often write about state judiciaries through the lens of state supreme courts or judicial selection systems (Bonneau, 2003; 2004; 2005; Bonneau & Gann-Hall, 2003; Brace & Gann-Hall, 1995; Crowe, 2007; Graber, 1998; Hall, 1987; 2006; Hall & Bonneau, 2006;). Few write about lower level state courts. These increasingly complex bodies are excellent venues for organizational studies (Boyum & Hudzik, 1991). Failing to extend the analysis beyond state appellate courts leaves a hole in our understanding of how courts affect citizens including constitutionally guaranteed rights of access and equality. Furthermore, public administration scholars, and especially scholars of policy diffusion, have yet to till this fertile ground.

Studying the judicial branch is important because these institutions influence the way Americans live. Courts make rulings that shape public policy. Public goods are guarded by a judiciary at both the federal and state level. Through interpretation or application of laws created by legislators and enforced by the executive branch the courts impact all aspects of public and private life in the United States. In short, courts are essential to fair and equitable justice for all American citizens.

Judicial Branch Accountability

More than 200 years ago in *Federalist* 78, Alexander Hamilton wrote “There is no liberty if the power of judging be not separated from the legislative and executive powers.” Still today, judicial independence is a critical component of the American court system. The three branches are inexorably linked and judges must be able to do their jobs without undue interference from citizens, politicians, or other bureaucratic actors.

By design each branch of government is a check and balance for the other two. Through this relationship, American courts bolster the authority of both state and federal government by protecting individual rights while simultaneously assuring the common good. However, relegating the judicial branch solely to the role of guardian is an unfair characterization of the responsibility of the system.

Courts have many roles including the duties to administer justice, decide disputes, maintain peace and stability, assure liberty, infer social order, afford equal protection, and guarantee due process of law. For 30 or more years, courts have been on the radar screens of bureaucrats and politicians because increasing case loads lead to larger requests for facilities, personnel, and fiscal resources (Boyum & Hudzik, 1991). The resulting growth in budgets and court management systems challenge judicial independence as the executive and legislative branches are more interested in scrutinizing the function and operations of courts than ever before. Even so, judges are generally not treated like other public servants. Legislators care about court administration because of their perception that the electorate holds them accountable for institutional activity.

Public perception of the judicial branch often reflects on legislators – and their ability to remain in office. So, courts matter both practically and ideologically.

Judges are not supervised like other employees in state government. Their position is unique in that traditional performance appraisal tools are inadequate to address the complexity of the job. Naturally, one might wonder to whom they are accountable. How can their performance be effectively measured? Like ancient Greek and Roman philosophers and poets (e.g., Socrates, Plato, Juvenal) we are left to wonder who “watches the watchmen” (Winstedt, 1899; Sosin, 2000). Officers of public trust have a responsibility to deliver high quality service, and if we believe that, then we must decide how, and by whom, they should be held accountable. How should states decide when, or even if, judges should undergo performance appraisal? Some states use judicial performance evaluation (JPE) systems to accomplish these tasks. Anecdotal evidence suggests that JPE programs can increase the effectiveness of state court systems.

American courts are tasked with walking the tightrope between independence and accountability but understanding exactly what those terms encompass is a point of contention between officers of the court, scholars, and others interested in studying the judiciary. In a 2002 law review article, Malia Reddick offered a clear, cogent definition of judicial independence and accountability. She wrote “...Judicial independence refers to the common law tradition of a judiciary that is institutionally immune from outside political pressures in the resolution of individual cases, whereas judicial accountability comports with democratic principles and allows the judiciary to be responsive to changes

in public opinion.”

To accomplish the things mentioned in Reddick’s definition, judges must have responsibilities beyond the courtroom as well. These public servants serve as *de facto* court managers and administrators. The literature describes a clear distinction between “court management” and “judicial administration” (Hoffman, 1991; Stott, 1982), acknowledging that the former is a focus on structure and function while the latter is driven by values and system design (Boyum & Hudzik, 1991). Though a judge’s management responsibilities may impact his or her ability to be an effective administrator, JPE programs are aimed more at values and system design than simple workload measures. Following the literature, I make the choice to study judges as administrators within the context of JPE programs.

States may be motivated to adopt JPE programs because of the interrelatedness of independence and accountability. These dueling functions of the court system create a responsibility, even an obligation, for officers of the court to perform efficiently, effectively, and to undergo periodic performance review. Public cries for accountability extend into all branches of government, including the judiciary. State legislators, other politicians, and even bureaucrats are tasked with creating strategies to fulfill the responsibilities that come with public trust. Designing effective performance measures can send a signal to citizens that their trust is well-placed and that state affairs are in order. However, systemic performance measurement is different than employee performance appraisal. The former is about tallying output, outcome, and process

whereas the latter focuses on evaluating individuals. JPE may be a way to measure performance of both the system and individuals judges; however, evaluating the merit of the program is outside the scope of this study of policy adoption.

Adopting performance measurement programs is a policy choice; a clear decision to increase monitoring and oversight activities of the judiciary. Performance measurement can have the consequence, whether intended or not, of increasing accountability of the judicial branch. But it can also infringe on the way judges conduct the business of the courts. Though judges often have wide latitude to make case decisions, they already do so with considerable constraint including three very important checks: the job is too big for one person to undertake alone; other judges may review case decisions (using the appeal process); and the political process is an overriding force guiding judges (Kozinski, 1997).

Nonetheless, if considered from an individual perspective, performance evaluations can threaten the independence judges so fiercely defend. Judges are critical stakeholders in the court system. Often support from key court administrators, for example, the chief justice of the state supreme court, may act as a signaling mechanism for others. Therefore, when judges balk at performance evaluations other institutional actors may attempt to avoid making a policy adoption decision. Judges have traditionally avoided performance evaluation and when state legislators choose to adopt a JPE program they are making a policy choice that may impose different norms and values on the most tradition bound branch of government.

JPE illustrates the intricacies of policy adoption and offers an innovative setting for diffusion research. Characteristics of one state are not necessarily replicated in others. The scope and tenor of the programs varies across the American states. However, there are some characteristics of JPE programs that are homogenous across all states. Those ubiquitous characteristics make it possible to study the different environmental traits and resources available in different states so that the variation can help shed light on state policy adoption decisions. That is, some things are more important for a policy to be adopted in one state than others given specific environmental characteristics.

Research Problem

Using state level data, this research seeks to answer two specific questions, both centered on the characteristics leading to the increased likelihood of adopting a JPE program.

- Is JPE a significant reform for state court systems?
- What factors make policy adoption more likely in American states?

In addition, the research focuses on an innovative court reform framed with an eye toward administrative implications of the programs.

In the process of illuminating the factors contributing to JPE program adoptions, I may be able to comment further on whether JPE is a significant reform for state court systems. Though I will not analyze JPE specifically, I can begin to use the program to discuss how variables like system resources, personnel, training, and human resource management practices affect the overall effectiveness of state courts. Discussions of

perceived and actual court management practices complement the descriptions of the policy diffusion process and lend context to how or why certain characteristics (for example, selection systems) impact JPE adoptions.

Variables Included in the Study

The characteristics related to state policy and found in previous research guide the choice of variables included in this study. From existing research we know state policymaking is inherently political. Few subjects are more integral to understanding the process than the composition of the ideological leanings of citizens (Berry et al, 2007). Early policy scholars attributed changes in state policies to socioeconomic conditions but Erikson, Wright, and McIver (1993) altered the way we conceptualize political ideology with their book *Statehouse Democracy*. In this work, the authors establish and empirically support the relationship between opinion liberalism and policy decisions. They find that policies adopted by states are strongly correlated with majority opinions of citizens across the states and change infrequently, if at all, through time (Erikson, Wright, & McIver, 1993). Erikson, Wright, and McIver's look at institutionalism creates the foundation for the political ideology variable included in this study. Liberalism typically results in an increased willingness to undertake new policies requiring fiscal support. Hence, as liberalism scores increase, I suspect the likelihood of adopting a JPE program will also increase.

Though political ideology may remain relatively stable through time as Erikson, Wright, and McIver (1993) suggest, the ability of citizens to consume information is fluid

and dependent on changing socioeconomic conditions (Berggren, 2001). The decision to become politically savvy is expensive in terms of resource exchange. Individuals at the upper end of the socioeconomic spectrum are more capable of engaging in educational activities that lead to higher levels of citizen sophistication (Berggren, 2001). Many voters making judicial selection and retention decisions may not be prepared to digest the levels of information provided by comprehensive evaluation processes like JPE. To investigate the impact of sociodemographic characteristics I ask whether higher socioeconomic status among a state's citizenry leads to the increased probability that a state will adopt a JPE program. Coupling motivational variables with other explanatory information such as resources, geographical proximity, and characteristics specific to the judiciary is more robust than looking at any of these categories alone.

Variables such as political climate or voter sophistication may also influence the decision to adopt a JPE program (e.g., see Roberts, 2000). For example, in 2007, while campaigning for president, former governor of Massachusetts, Mitt Romney, called for the resignation of a judge he had personally appointed less than two years earlier. He criticized the judge for releasing a convicted murderer without bail because the criminal killed someone after being released (Levenson, 2007). Political aspiration probably played into Romney's decision to highlight this case and this judge. However, this incident drives home the point that single events can affect individual judges.

As time passes, the question of whether the judge was a poor performer or victim of politics will most likely be more discernable. With that information, the effect of this

case on judicial independence can be evaluated as well. Romney critiqued the judge because of a bad outcome, not because of his overall performance on the bench. Public pressure, the media, and political posturing may have an effect on how the judge rules in the future; there may be a ripple effect throughout the Massachusetts judiciary as other judges take note of the fate of the judge Romney condemned. However, if JPE was offered in Massachusetts, Romney, and others who judge judges, would have more reliable data on which to base retention and selection recommendations. JPE may help manage and minimize the sensationalism that can be inserted into the judicial process with extreme cases or highly publicized crimes, criminals, or victims. In the absence of an objective process, the influence of politics and public opinion can be disproportionately considered and judicial independence is at risk.¹

Given JPE is a performance appraisal tool it may be adopted more readily when judicial selection comes from a merit based process. Selection system becomes an independent variable in my models implying the type of selection system is related to when a state adopts JPE. Even programs designed to focus on merit as the main criterion determining the selection of judges can be very subjective. What makes a “good” judge? Who decides? How can we objectively capture a concept so ripe for bias? Through formal JPE systems some states have developed a way to measure judicial performance based on objective criteria anchored in language, behaviors, and outcomes recognized by professionals within the court system as well as participants that interact through it. In the process, merit based performance becomes an important part of decreasing the subjectivity of the selection process. And so, the presence of merit selection systems may

make marked contributions to whether JPE is adopted. The implication is that elections may depress adoption of JPE programs.

A culture accepting and encouraging performance measurement systems may also offer a critical clue in determining whether a state will adopt judicial performance policies. JPE subjects judges to the kind of performance evaluation that most other public employees experience. This tool holds judges accountable and preserves the integrity of the court system by providing information to those who select judicial officers. According to the traits of effective performance appraisal outlined by human resources scholars (Brett & Atwater 2001; Daley 1985; Dorfman, Stephan, & Loveland 1986; Levy & Williams 1998; Murphy & Cleveland 1995 Roberts 1992; 1995), JPE is an effective performance appraisal device (Kearney & Paynter, 2007). States exhibiting performance cultures may be more likely to gravitate toward JPE.

Developing standards for government performance received more attention after Osborne and Gaebler (1992) reignited the notion of a transformational entrepreneurial spirit in government. This and subsequent work by public administration scholars (e.g., Ingraham, Joyce, and Donahue, 2003) pushed things such as the National Performance Review that in turn drove efforts at the federal level and also transcended boundaries in terms of management practice to state and local government. As such a number of states became very good at elements that are identified as critical elements of performance culture. Ingraham, Joyce and Donahue (2003) highlight the need to consider management capacity to understand organizational outcomes, including managing for results in their book. While acknowledging the usefulness of criteria key to running

effective government programs such as efficiency, process, systems and capacity, Ingraham, Joyce and Donahue (2003) argue that one quality above all is crucial to the overall performance of government: effective management. JPE is a tool that can be used to further effectiveness.²

Overview of Judicial Performance Evaluation

As seen in Figure 1, Alaska³ pioneered JPE in 1976 and now 20 states have now implemented official JPE programs. Therefore, 20 states are included as “adopters” in my models. Regionalism and geographic proximity seem to play a role in which states are official JPE states and those that are not. However, as my model shows, these factors alone insufficiently explain why some states adopted JPE programs while others did not.

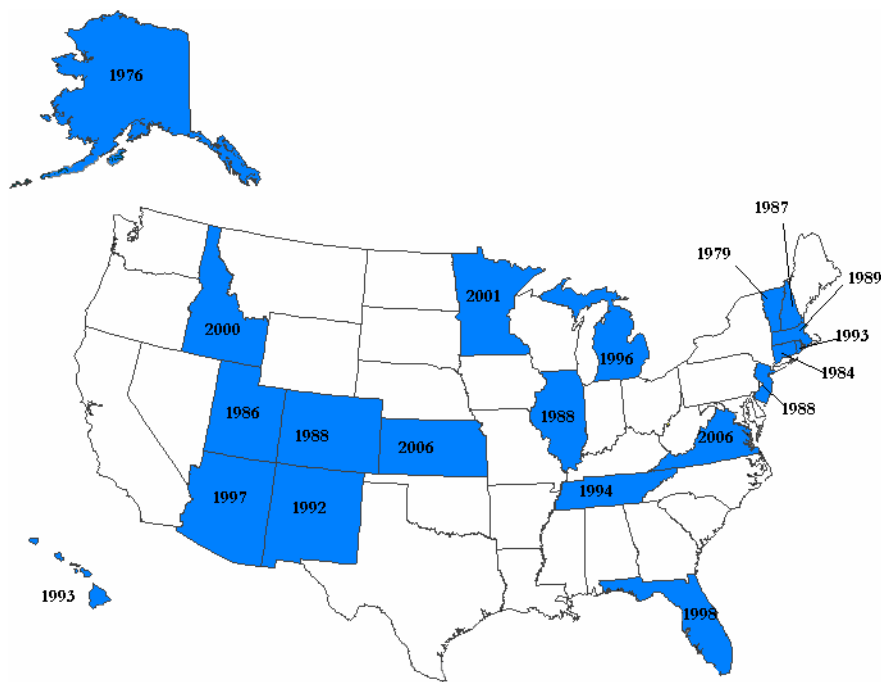


Figure 1: Adoption of JPE Programs

Source: U.S. Bureau of Justice (2004); National Center for State Courts (2007)

The most comprehensive resource describing JPE programs is a 2006 report by the Institute for the Advancement of the American Legal System (IAALS) at the University of Denver. In this work, official JPE programs are defined as those run by, sponsored by, or approved by state government (IAALS, 2006). This definition of an “official” JPE program has been adopted for this study. Its reliability is bolstered by research compiled the Bureau of Justice also listing “official” JPE programs and including the same states as “official JPE” states.⁴

JPE is intended to be a politically neutral process designed to analyze a judge’s performance on multiple levels including: how they interact with people in the courtroom, interpret existing law, and manages his or her workload. A clear and easy parallel can be drawn between JPE in the judicial context with efforts and research by public administration scholars that focus on similar human resource management and performance measurement questions in alternative public settings. As such, JPE offers the potential to contribute, through analytic generalizability, to these broader categories of research.

Outcomes in JPE programs are created by measuring individual judges against benchmarks as well as the performance of other judges within the state conducting the evaluation (IAALS, 2006). An effectiveness score is calculated through responses to surveys completed by various respondent groups such as attorneys, jurors, litigants, court staff, witnesses, and occasionally other judges (IAALS, 2006). Though measurement tools and policies vary, JPE processes are usually designed with two critical goals in mind: judicial self improvement and constituent education (IAALS, 2006).

JPE gives citizens and politicians a tool to evaluate judicial competence. It provides accountability for merit selection processes and gives individual judges information about improving their own performance. Research can be used to aggregate the overall performance of the judicial system (Esterling, 1999). Stakeholders, including voters, can use JPE to evaluate the procedural and administrative performance of judges rather than using case decisions as a proxy for a measurement device. This tool contributes to the preservation of judicial independence by separating adjudication from administrative and management processes. In turn, this offers more validity and confidence in the process as ratings can be systematically determined.

The program adopted by the Alaska state legislature in 1975 was designed to hold judges accountable and also to ensure judicial independence (the freedom to make case decisions based on the law not politics). However, no other program was adopted until 1979 when a statute passed in Vermont authorizing the formation of a joint committee on judicial retention. Though these states are far apart –culturally, geographically and ideologically –Vermont adopted a program similar to the one Alaska had been running for six years. Perhaps culture and ideology mattered: both states have smaller populations in comparison to other American states which may lead to more “friends and neighbors politics” where individuality is valued. I test ideas such as these in my dissertation.

Perhaps adoption decisions are driven by the potential uses for the appraisals. JPE results are tools that give judges, citizens, administrators, and other stakeholders the ability to evaluate the courts both systemically as well as on a local, more individualized

level. Demands for JPE programs can come from public cries for reform of the judiciary after noxious behavior by an individual judge or as the result of displeasure with heavily publicized, emotionally charged cases (see Roberts, 2000). On the other hand, elites may call for JPE programs to quell complaints of judicial abuse, to justify requests for additional resources, or to monitor the behavior of the judges themselves.

Though the debate over what characteristics make a “good” judge has not been settled, anecdotal evidence suggests results from judicial performance evaluations guide voters in decisions. For example, six Colorado judges have not been re-elected by voters following recommendations of the local⁵ Judicial Evaluation Commission not to retain them (personal communication, Jane Howell, August 9, 2007).

Judicial performance is increasingly a part of the political and administrative landscape of state and local governments. The basic tenets associated with the American justice system are fairness, efficiency, and equity. Citizens demand access to the courts and have expectations about how court administration will occur. Judges play a critical role in the administration of justice from making case decisions to serving in leadership roles within the court system.

Organization of the Study

I just reviewed the structure, history, and importance of American courts as a way to acquaint readers with the intricacies of the judicial system and place JPE in an institutional context. A thorough overview of the American court system and its place in the public administration and policy literature is presented in Chapter Two. This material

is provided for a deeper understanding of technicalities like court structure, idiosyncrasies relative to state courts, and the interactions between the federal judicial branch and state court systems. In Chapter Three diffusion theory and institutionalism are given thorough treatment and principal-agent theory is briefly reviewed. Chapter Four presents a review of the literature on diffusion and innovation studies building toward methodological choices that I make. Chapter Five discusses the theory behind the models and Chapter Five provides a detailed explanation of my research methodology including how my dependent and independent variables are constructed. In Chapter Six I test my models and discuss the association between the variables. Using the results generated from my analyses, Chapter Seven applies theoretical explanation to the models.

Through this process, I connect diffusion of innovation to court reform literature and innovation theory, as well as to public administration studies. I conclude by discussing my general conclusions, the limitations of my study, and offering suggestions for future areas of research.

Chapter 1 Notes

¹ California Supreme Court Justice Rose Bird was removed from office during an especially contentious political contest. This race is one example of how politics can effect judicial selection outcomes.

² One way to measure a performance culture would be to compare the overall performance scores assigned to states in the Government Performance Project. However, because the methodology and ranking criteria have changed substantially since 2005, scores across years are not comparable. Collecting longitudinal data over 30 years to incorporate the updated measures is not feasible within the scope of this dissertation.

³ Though Alaska adopted JPE in 1975, the program was not started – or implemented – until the following year. In the EHA model, time begins in 1976 since it is the first year after adoption. When I describe the implementation process in Alaska I will refer to 1976 as the initial year. When I note the adoption of JPE in Alaska I use 1975 as the first year of the program. This issue underscores the difference in adoption and implementation as well as the importance of clearly delineating between the two processes.

⁴ Other JPE programs are sponsored by private groups such as state or city bar associations. For example, the cities of Chicago and Los Angeles and the bar association in New Hampshire have JPE programs. A complete listing of unofficial JPE programs appears in Appendix C.

⁵ In Colorado there are local Judicial Evaluation Commissions for each judicial district in the state and a state Judicial Evaluation Commission that oversees JPE processes for the appellate courts and the state supreme court. Therefore, specifying whether the local commission made the recommendation or if it was a result from the state JEC is necessary in this case.

Chapter II: Setting the Stage

Understanding of public policy adoption is premised on a comprehensive knowledge of the context and of the system, subsystems, and relationships between the actors crucial to the policy adoption process. According to Paul Sabatier, “The process of public policymaking includes the manner in which problems get conceptualized and brought to government for solution; governmental institutions formulate alternatives and select policy solutions; and those solutions get implemented, evaluated, and revised (p. 3).” Chapter Two describes state court systems so readers have a thorough understanding of the resources, players, and constraints affecting adoption of JPE programs. The policy process can be illuminated through understanding how JPE programs have been implemented to date. By discussing the interactions between stakeholders in the court system I contribute to our understanding of public policy.

Though none of these purposes is explicitly related to explaining the characteristics leading to the diffusion of JPE programs in the American states, understanding processes, resources, and actors in state court systems provides context through which variables in my diffusion models make sense. Furthermore, my contribution to the body of research on state court systems is a valuable acknowledgement of why the third branch of American government is important to public administration scholars.

Why We Should Study Courts in Public Administration

Courts differ in management practice and structure from many legislative and executive branch agencies. In addition, courts offer a different perspective on topics germane to public administration. David Rosenbloom put emphasis on this area of research through examining the role of public law in public administration (e.g., Rosenbloom, 1987; 1989; 2000). Through this lens, scholars can study management practices, effects of technology, performance measurement, human resources management and even policy diffusion. Though courts should be an important facet of public administration study, scholars have given this branch of government little attention.

Scholars of state judiciaries have made a number of important findings on subjects such as dissent rates (Brace & Hall, 1990; Hall & Brace, 1989; Jaros & Canon, 1971), litigation decision making processes (Emmert, 1992; Songer & Tabriski, 1999), court dockets (Atkins & Glick, 1974), impact of the judiciary and implementation of programs (Canon, 1973; Tarr, 1977), internal operating rules and procedures (Hall, 1990; Slotnick, 1977). Even with these studies, research on state courts has focused on supreme courts, has been largely descriptive, and has not been able to establish the micro-level causes relative to macro-level patterns (Brace, Hall, & Langer, 2001). Studies in public administration journals featuring the judiciary often concentrate on issues such as the implication of activist courts, intergovernmental relations, and federalism (Kearney & Sheelan, 1992; Rosenbloom & Ross, 1998; Wise, 1998; 2001,

Wise & O’Leary, 1992; 1997); or on resource deployment issues like strategic planning (Boyum, 1999), judicial modernization (Flango, 1975), technology and information management (Rottman et al., 2007), or budgeting (Douglas & Hartley, 2001). However, these represent the few extant studies on courts found in mainstream public administration literature.

Recent publications (Savchak & Barghoti, 2007) suggest that trend is beginning to change. One relevant example (Kearney, 1999) provides a descriptive overview of the JPE process, state programs, and the performance measurement movement but stops short of conducting an empirical analysis that would aid in explaining why states consider adopting a JPE program in the first place.

With its foundation in English common law and the U.S. Constitution, the American system constantly compares the past and present. Precedent guides lawyers and judges in constructing their arguments. The system depends on individuals interpreting federal and state law, rules, regulations, and prior case decisions in similar fashions. Because of the need for consistency the concept of *stare decisis* emerged. Under this principal a series of rules, norms, and beliefs are created and define the American court system. Judges can not ignore or trivialize precedent (Kozinski, 1997). Through the creation of normative rules, the courts have become institutionalized. In these chambers we litigate disputes, hold criminals accountable, and interpret the laws that shape public policy. Yet, precedent, much like language, can be interpreted in different ways (Kozinski, 1997) and so, judges become activists in the way they

understand mitigating factors or other parameters of cases. Their rulings illuminate policy choices and, by extension, the judiciary at all levels affects how the legislative and executive branches conduct business.

Administrative decisions or strategies can also affect court decisions. Political scientists have amassed a distinctive body of literature on judicial voting behaviors, especially at the appellate court level (Beiser, 1973; Brace & Hall, 1993, 1995, 1997; Dubois, 1988; Glick & Vines, 1973; Hall, 1985, 1987, 1992; Traut & Elmert, 1998). Also, judges who self-identify as “administrators” tend to emphasize procedural goals and precedent only to expedite case resolution (Boyum, 1979; Ungs & Bass, 1972). When asked if case management practices, such as a push for settlements to reduce the time a case is active, impact the judicial decisions, some judges responded affirmatively noting the judge’s need to control both proceedings and attorneys sometimes results in advocating for settlement to speed resolution rather than trials (Neubauer, 1978; Winters, 2002). Accepting settlements because of administrative burdens and case management pressure represents threats to both independence and accountability because judges acting to control external stimuli are overriding case decisions based on law, precedent, and the judge’s unbiased opinion.

The Relationship between the Judiciary and Public Policy Creation

Policy adoption and spread is a topic of interest to scholars. Diffusion research conducted on issues as varied as education (Dye, 1980; Mintrom, 1997), state lottery adoption (Berry & Berry, 1990; 1999), tort reform (Canon & Baum, 1981),

environmental management (Bacot & Dawes, 1997), and social programs (Gray, 1973) provides a way to understand the complexities of these issues as well as the motivations of the actors who create public policy to address them. Often though, policies regulating judicial administration are not studied.

Judicial decisions can affect public policy (Feeley & Rubin, 1998). Public policy decisions are not made in isolation; in fact, a single decision can have a ripple effect through American society. For example, consider the passage of the Americans with Disabilities Act of 1990 (ADA). Though the ADA was officially adopted in 1990, it was preceded by decades of work including passage of related legislation such as the Rehabilitation Act of 1973. The ADA encompasses a broad range of issues that fall under the purview of civil rights laws prohibiting discrimination based on disability. Though legislators made the public policy decision to adopt the ADA, the courts determined its policy impact by interpreting the legislation through rulings in ADA cases.

Subjectivity can easily creep into implementation of the ADA since the determination of what “disability” means is made on a case by case basis. The courts grant deference to expert medical opinion in individual cases, but even so the definition of disability is neither easily described nor agreed upon. Because of this the courts are frequently asked to settle disputes over interpretation of the Act and related issues. Over time, rulings in these cases have changed the scope of the ADA.

The effects of interpreting the meaning and constitutionality of laws reach beyond the federal judiciary. State courts get into the nuances of every day life in America when criminal trials begin, divorce proceedings are engaged, adoption cases are heard, and

disputes over wills, trusts and estates, labor relations or consumer rights are resolved (Glick & Vine, 1973). These “outcomes” have long range social and economic effects on the attitudes of Americans and their confidence in the judicial system (Glick & Vine, 1973). Judges are passionate in their defense of independent case decisions (Nelson, 1981 in Hudzik, 1991) as well as of their role as policy makers (Hudzik, 1991).

Pundits and scholars debate about whether courts are policymakers. Conservatives and liberals alike often criticize judges for being “activists”. Even so, the courts are rarely seen as active policymakers. Notable decisions rendered in judicial chambers shape the fabric of American society. Political scientists have long argued that judges are motivated by their own policy preferences (Pritchett, 1948). Since the 1940s many scholars have contributed to the attitudinal explanation of court decisions (Smith, 1988; Segal & Spaeth, 1993; Gillman, 1997; Baum, 1997). However, researchers have also found that more than judicial attitudes affect rulings and, by extension, court administration (Epstein & Knight, 1998). The manner in which case decisions are made affects the way that judges manage their courtrooms and courthouses as well. Judges look to peers in other courts, other states, and to the federal judiciary for cues on how to manage the legal process most effectively. Learning from the experiences of other judges can become a reason to undertake innovative programs in court administration. Advancements in this setting are noteworthy because of the potential for systemic, intergovernmental impact.

For example, in 2004 the Seventeenth District of Colorado state courts piloted a

paperless court environment. The pilot tested both the capacity of court personnel to deal with technological tools as well as the possibility that increasing efficiency through use of electronic records would have a significant impact on processing and the time that a case remained active in the system. Judges had to learn to use new technology, to communicate differently with court participants and staff, and to enter judgments in new ways. These changes increased availability of files and records for court staff but decreased efficiency as employees (including judges) had to grapple with the new technology. Judges in other districts were interestedly watching the pilot. However, the Seventeenth District returned to a traditional, paper record system because of the difficulties inherent in the paperless environment. Though electronic record formats work in other environments, the paperless court experiment failed in Colorado. But that does not preclude the possibility that other management reforms might succeed.

In some respects, courts are laboratories for other public administration theories and models that have been applied in executive and legislative settings. For example, public personnel management scholars have written about many types of performance appraisals used in public settings (Daley, 1985; Dorfman, Stephan, & Loveland, 1986; Roberts, 1992, 1995; Levy & Williams, 1998; Coggburn, 1998; Brett & Atwater, 2001). A number of publications on human resource management feature 360-degree feedback mechanisms (Brett & Atwater, 2001; Daley, 2007; DeLeon & Ewen, 1997; Waldman, Atwater, & Antonioni, 1998). JPE is an application of the 360-degree process (Kearney & Paynter, 2007).

JPE as a Policy Tool

In most cases the decision to adopt a JPE program resulted after years of discussion between interested groups such as the state bar association, court officials, and citizen groups. Interest groups play a powerful role in policy making. They move actors from one side of a debate to another, from conflict toward agreement. Mobilization of a group or policy community can result in power shift. The history of state adoption decisions chronicles power shifts, rallying policy communities, and interest group politics.

Developing a deeper knowledge about the characteristics leading to adoption of this innovation by American states gives researchers, policy makers, politicians, and other actors a way to operationalize how effectively the program meets broader accountability and performance goals required by the Government Performance and Review Act of 1993(GPRA) and legislative bodies. GPRA assesses various results of a program relative to its intended results and is a strategic planning and performance measurement program required for some federally funded programs. Though some scholars (e.g, Radin, 2000) have suggested GPRA amounts to little more than exercises in program compliance, programs that incorporate performance information into the decision making process have gained credibility. Effective leadership, including engaging in management reforms (and I contend JPE is a form of effective leadership and performance measurement (Kearney & Paynter, 2007) leads to positive outcomes for organizations (Moore, 1995; Rainey & Steinbauer, 1999). But policy adoption and change, even good change, can be slow.

Adoption of state policies typically seems incremental; however, if traced back far enough, there is a point that each policy, newly bursting onto the scene, was an innovation that changed the arena in which it was adopted. Researchers have worked to define the subtle differences in innovation, invention, adoption, and diffusion of policies (Eyestone, 1977). For example, the policy literature describes innovation as “a program that is new to the government adopting it” (Walker, 1969; Gray, 1973; Rogers, 1995). Policy invention is “the process through which original policy ideas are conceived” (Berry and Berry, 1999). Invention can spur innovation. Creativity, discovery, and new ways to deliver public goods can both involve adoption decisions and include movement of policies across subsystems and geographic borders. Studies attempting to explain both invention and innovation have provided a rich body of literature from a variety of disciplines that describe the processes as distinct but complementary.

Court Reform and Public Administration

Despite the rich array of potential subjects, articles featuring judicial administration have been scarce in mainstream public administration journals (Hays & Douglas, 2006). Case studies and practitioner experience pieces have been prevalent. Only a small percentage of published work has incorporated topics of systemic impact to state court systems (Hays & Douglas, 2006). Judicial administration has focused on court organization and practice throughout its existence as a management specialization (Hays & Douglas, 2006). Courts are tradition bound, relying on attorneys to populate administrative and operational ranks; lawyers administer as well as litigate (Stupak, 1991;

Hays & Douglas, 2006), giving them unique perspectives on both the need for reform and the ability to visualize how those reforms should look.

Whether we realize it or not, courts are ever present in daily life. Citizens are likely to encounter a courtroom in run of the mill transactions like traffic citations, jury duty, transactions of wills, trusts, or estates, or in other similarly mundane matters. Rulings from court cases like the ADA example previously discussed have sweeping effects that govern how we conduct business, travel, work, shop, and live. Television and print news sources report on trials, both civil and criminal, that have some effect on the public. Public opinion is shaped by the tenor and frequency of these headlines. Often the media are critical of the judiciary in general, and of judicial elections specifically (Bell, 2001; Campbell, 2002; Wohl, 2000). Public administration scholars have a responsibility to study connections between court activities and daily life.

Many public administration studies benefit from using stakeholders in systems to shed light on phenomena present there. Managers and leaders are often featured subjects in research projects. Following the lead of other public administration studies, judges should be likely candidates for studies of the state court system.

Surprisingly, judges are among the biggest critics of the court system and in election states they detest campaigning (Elliott, 2002; Phillips, 2002; Bonneau, 2004). This means that increasing campaign donations and budgets can create a maelstrom of conditions where judges are more accountable to those funders contributing to their election bids than to the principle of an independent judicial branch (Bonneau, 2004).

Thus, there is a potential for general system compromise. Following such scenarios, scholars often question the impact interest groups have on policy formation, the effect of voters, and what influence cultural norms and values have on public policies.

To assess whether courts have been featured recently in the top public administration journals I searched the Social Sciences Citation Index (SSCI). The SSCI is a measure of a journal's impact on a specific academic discipline. The measure is a combination of the number of annual citations in all ISI indexed journals and the number of citations for a specific journal. The category "public administration" has 24 indexed journals in every year since 1998 except when even more journals were featured (2004 (n=26), 2005 (n=25), and 2006 (n=25)). Over the course of the past 10 years of public administration journal articles, a scant few specifically about state trial courts or state court management and administration have been published. One about the representation of women on state trial and appellate court benches appeared in *Social Science Quarterly* (Williams, 2007) and another devoted to court security was featured in the *Annals of the American Academy of Political and Social Science* (Greacen & Klein, 2001). State appellate courts have been written about prolifically by some political science scholars (e.g., Bonneau, 2003; Hall, 2006) but the public administration academy has yet to tap into studies of state courts.

Academic programs devoted to judicial administration have been subsumed in programs with a broader focus. The few programs that remain are designed to train administrators, not researchers, resulting in a lack of judicial scholars of the public

administration persuasion (Hartley & Bates, 2005). As with other subjects incorporating aspects of both political science and public administration, the split of the two disciplines has affected judicial administration scholarship. The division caused public law scholars to look for other avenues to showcase their work and limited collaboration between those academicians and public administration scholars (Hays & Douglas, 2006). The combination of all these issues makes the judiciary a topic ripe for future research.

The Need for Court Reform

In a 2003 article featured in *Spectrum: the Journal of State Government*, Alfred Carlton, then president of the American Bar Association, highlighted several issues to support his position that state court reform is necessary (Carlton, 2003). Those points include:

- The patterns and effects of campaigns on the judiciary can be negative, and even harmful.
- Partisanship in campaigns is causing the judicial branch to lose its independence and join the ranks of politicians in the legislative and executive branch.
- There can be a “trickle-down” effect from state budgets to court budgets when resources are strained.
- American society is more diverse; courts must reflect and embrace this diversity to maintain the public’s trust and confidence in the system.

Judicial scholars have frequently discussed each of these issues in the court administration and reform literature. But diffusion models might be another way to

explain how, why, and *when* these issues affect the administrative capacity of state courts most. And, in turn, diffusion may be a way to understand how, why, and when state policies related to the courts are adopted.

For example, campaign elections and finance might be described as motivations or resources linked to judges. Certainly concerns about budget appropriations can be resources or obstacles. Public administration scholars have written extensively on state budgets and the impact of surpluses and shortfalls (Albritton & Dran, 1987; Bozza, 1998; MacManus & Groethe, 1989; Poister & McGowan, 1984; Premchand, 1981; Rubin, 2005). Court budgets have a place in state budgets. Increasing scholarship on court budgets can contribute to a greater understanding of states' fiscal policy decisions.

The words "motivation", "resources", and "obstacles" appear repeatedly through my discussion of policy diffusion and the courts. The repetition is not accidental. These ideas encapsulate the variables in diffusion models and are things that should concern judicial administrators, judges, citizens, and the scholars that study them. Because these are important concerns in the court reform movement and literature, each will be discussed in Chapter Three and throughout the methodological design of this study. Before getting to the theoretical foundations for the empirical models that follow, a description of the American court system and its key features provides contextual information for the discussion of findings and recommendations concluding the dissertation.

Overview of American Court Systems

The United States is governed through a federalist structure created by its Constitution. Through this document, certain powers are granted to the federal government while the rest are reserved for the states. Powers granted to the federal government fall under the jurisdiction of federal courts; likewise, activities regulated by state authority are under state court jurisdiction. Therefore, the American judiciary is made up of separate court systems for federal and state issues.

Though each is independent, the systems interact frequently when cases cross jurisdictional boundaries. For example, if a person is kidnapped during a car theft in North Carolina and driven across the state border into Virginia, the thief could be tried in federal court as well as in state courts. To untangle the complications from situations like this, or in corporate law, or myriad other examples, federal courts have jurisdiction when matters involve state laws in more than one state. Table 1 compares federal to state court systems by briefly considering structures, systems of judicial selection, jurisdiction, and methods for appeals. An elaboration of both state and the federal systems follows.¹

Table 1. Comparison of State and Federal Court Systems

	State Courts	Federal Courts
Structure	State Supreme Court Intermediate court of appeals State trial courts --Specialty courts	U.S. Supreme Court 13 Courts of Appeals 94 U.S. District Courts U.S. Court of International Trade U.S. Court of Claims U.S. Bankruptcy Court
Selection System for judges	Varies including merit, appointment, election	Presidential nomination followed by confirmation by U.S. Senate
Tenure	Varies from a prescribed number of years to life	Life
Jurisdiction	Criminal, probate, contracts, torts, family law, state law	Issues of constitutionality, laws and treaties of the U.S., diversity jurisdiction, bankruptcy, Article 1 courts (veteran's appeals, military appeals, U.S. Tax Court)
Avenue for Appeals	State Supreme Court; constitutional matters or diversity jurisdiction to U.S. Supreme Court if certiorari is granted	U.S. Court of Appeals; decision by Court of Appeals reviewed by the U.S. Supreme Court

Source: U.S. Courts, 2007

Jurisdiction

The courts hear cases within their “jurisdiction” or practical authority (see examples of jurisdiction in Appendix A). The U.S. Constitution grants formal authority to federal courts through Article III, Section 2 of the United States Constitution and to the states through Articles V and XIV of the U.S. Constitution. State and federal courts

make rulings on legal matters and work to administer justice within the confines of the systems through their respective jurisdictional capacities.

Jurisdiction is further subdivided into matters of original jurisdiction and those of an appellate nature. With original jurisdiction, courts hear cases first initiated by plaintiffs while appellate jurisdiction refers to the capacity of the court to act only after an action is contested after a ruling from a court of original jurisdiction. There are notable exceptions to this rule: when two or more states are involved in a case, actions are between the federal government and state government(s), if one of the 50 states sues the federal government, or if cases involve foreign states or citizens and American states or citizens, federal courts have original jurisdiction.

Despite very basic similarities, American courts are very different. These differences, first highlighted in Table 1, are discussed in the following sections on state judiciaries. Because a full description of the American courts should include an overview of all the components of the system, a description of the federal courts and the evolution and practices of the special case of Native American courts is provided in Appendix C.

State Courts

Unlike federal courts, no state court system is exactly like another. Differences in terminology and jurisdiction are among the notable distinctions in state court systems. For example, Delaware, New Jersey, and Tennessee differentiate between “court of law” and “court of equity” (chancery court). Courts of equity derive from canon law where adjudication processes are normally written, and judge based. Judges can order

preventive measures such as injunctions or restraining orders and typically hear matters involving private parties rather than those of public interest. Most often, courts of equity have jurisdiction over corporations, trusts, estates, and other fiduciary matters, including disputes over sale or purchase of land, questions of real estate title, or commercial and contractual agreements. Most states have no chancery courts and handle these matters in courts of law. Another example of a departure from the norm is the separation of criminal and civil appeal processes. Texas and Oklahoma have separate courts of last resort for criminal and civil matters. One final illustration, the Louisiana court system, is organized by a civil model. All other American states draw from English common law.

Disputes involving some relationship to an American state are heard within its state court system. Courts of general jurisdiction are usually the entry point for cases in the state legal system; however, courts of lesser jurisdiction, such as magistrate courts or justices of the peace sometimes handle petty offenses or arraignments. If a litigant is not satisfied with the outcome in a court of general jurisdiction, he or she may appeal to a higher court. Usually, these intermediate appellate courts review only mistakes of law and do not review the factual evidence of a case. Finally, if the parties are still unsatisfied with the way the case has been handled, the highest court in the state, usually referred to as the state supreme court, can be petitioned to hear the case to review decisions of lower courts.

No state court is required to follow the laws or rulings of those in another state. However, most courts look to decisions in other states for cues in cases where statutory

guidance is ambivalent or unavailable. Following examples from other states is a demonstration of how actors use communication networks within a policy subsystem in the decision-making process. Communication networks found in professional associations (e.g., the American Bar Association, the National Center for State Courts, or the National Association of Attorneys General) give stakeholders a way to shape administrative practices. Judges may also look to their “social system” for information on best practices in court management or administration. Geo-political similarities and differences may shape the method and frequency of communication. Judges and administrators may use normative filters to determine how or when to use information gained through their networks. Thus, innovations like JPE may resonate more or less strongly given constraints within a particular state court system.

Even though terminology, management practice, funding streams, jurisdiction and standard operating procedures vary, the basic structures for state court systems are generally the same. All 50 states have three general levels of court: state appellate, state trial courts, and specialized local trial courts (Glick & Vine, 1973). Table 2 illustrates how state courts are organized. The presence or absence of intermediate appellate courts and the numbers, types, and purview of trial courts of limited jurisdiction are the major differences in state court systems.

Table 2. Organization of State Court Systems (2006)

Type of court	Description and Number of Courts in the States
Supreme Court	All states have one supreme court
Intermediate Appellate Courts	38 states have intermediate courts of appeal. Alabama, Indiana, Pennsylvania, and Tennessee have 2 intermediate courts of appeal. Intermediate appellate courts have various names including: Superior Court, Court of Appeals, Appellate Division of Supreme Court or Superior Court, Superior Court
Trial Courts of General Jurisdiction	40 states have 1 type of trial court of general jurisdiction, 5 states have 2, 3 states have 3, and 2 states have 4. The names of these courts vary: Circuit Court, Superior Court, District Court, Common Pleas, and in New York, the Supreme Court.
Type of court	Description and Number of Courts in the States
Trial Courts of Limited Jurisdiction	24 states have only 1 or 2 of these kinds of trial courts; 12 states have 3 different kinds; 6 states have 4 or 5 kinds; 4 states have 6 or more different kinds. The names and functions of these courts vary widely. Some examples include Courts of Oyer and Terminer, Drug Courts, Justice Courts, Juvenile Courts, Probate Courts, and Small Claims Courts

Source: Bureau of Justice Statistics (2006); table format adapted from Glick & Vine (1974).

Naturally, one might wonder how many judges serve in various state courts. In 2004, the latest year data are available from the Bureau of Justice, there were 1,335 members of the appellate bench. Rhode Island is the only state that awards life tenure to its judges; other terms vary from four to sixteen years (Bureau of Justice, 2006). Trial court judges number 27,576 in all the states (Bureau of Justice, 2006). These are the

judges that hear most of the cases in the state judicial system. Evaluating the performance of such a large workforce is important to a well-functioning judiciary and to public administration in the states.

States adopting JPE have chosen to implement the programs differently. Some states evaluate only appellate court judges (e.g., Tennessee) while others have an elaborate comprehensive review process (e.g., Colorado). In part, these differences in implementation may be driven by the ways that judges get “hired”. Judicial selection systems differ between and within states. The following section on judicial selection illuminates the features of these systems.²

Judicial Selection Systems

American judicial scholars have written much about the judicial selection process in law review articles and other publications (Atkins, et al., 1984; Baum, 1983; Dubois, 1980, 1984, 1985; Hall, 1984; Reddick, 2002; Slotnick, 1988). Most focus on the tension between judicial independence and judicial accountability (White, 1976; Carbon, 1980; Flango & Ducat, 1979; Seis, 1982; Dubois, 1986; Caulfield, 2004). However, much of the judicial selection literature, found in publications from the 1970s and 1980s, was generated as a result of 14 states moving to merit selection systems (Glick & Emmert, 1987).

Despite recent trends toward merit systems, methods of judicial selection have been hotly debated throughout American history (Schneider & Maughan, 1980).

Considerable debates have been waged over which is the “best” selection system without

coming to any resolution. Early skeptics (Flango & Ducat, 1979) and suggested that selection procedures had little relevance to the type or quality of judge ultimately chosen. Interestingly, in more recent work judicial reform advocates disagree about the effectiveness of partisan and nonpartisan elections (Brace, Hall, & Langer, 2001). Some indicate that these systems are ineffective means for selecting judges because voters are uninformed about candidates and races while others disagree (Baum, 1987; Hojnacki & Baum, 1992; Lovrich & Sheldon, 1984, 1985).

The history of the topic is colorful and provides context for the importance of selection method in the 21st century. There are many examples of disputes over judicial selection found throughout accounts of the judiciary in the 1800s. For example, in 1813 ideological differences drove the New Hampshire legislature, with a Federalist majority, to expel all Democratic judges from the state's courts (American Bar Association, 2000).

Much of the existing research searches for correlations between social characteristics of judges and methods of judicial selection for clues to how judges might decide cases (Volcansek, 1982). Thus, the type of selection system in use is of great interest to both those who study the judiciary and those who award jobs to judges. More broadly, judicial selection is a compelling topic for public administration and judicial scholars because of its relevance to concepts like representation, access, and participation in the judicial system and to issues such as elite recruitment, campaigns and elections, and intergovernmental relationships (Slotnick, 1988).

History of Judicial Selection

Before the Revolutionary War judges were appointed by colonial governors. For about 50 years following the colonial period, legislative and gubernatorial appointment was the normal course of judicial selection (Hanssen, 2004). Of the original 13 states, eight used legislative appointment, two allowed the governor and his council to do the job together, and three gave appointment authority to the governor alone but required consent of his council (Escovitz, 1975). The upper class controlled government in the early years (Caulfield, 2004). Many political figures, including judges, reached office through the spoils system in the late 1800s.

The 1800s were a period of change. In the early 1800s Georgia became a trend-setter and was among the first to adopt popular elections (Caulfield, 2004; Hall, 1984). By 1856 more than half of the states in the Union used this method (Schneider & Maughan, 1980). The democratic principle of judicial accountability was advanced with elections. By the end of the Jacksonian era the spoils system had been phased out for more democratic forms of selection and governance that were taking root. From 1812 when Georgia adopted it until Alaska broke the tradition in 1959, all states admitted to the Union adopted popular election for some or all of their judges (Caulfield, 2004).

Even though popular elections increased judicial accountability, these processes were criticized for threatening judicial independence. Expanding bureaucracies and support for legal professionalism pushed state systems to morph from partisan election to nonpartisan election and finally to merit processes (Slotnick, 1988).

Reformers were concerned that judges were controlled by political machines and that corruption abounded in the judiciary (Caulfield, 2004). One solution was to separate political parties from the election process. Non-partisan elections began appearing in 1873 (Cook County, Illinois) and were adopted by 12 states by 1927 (Aumann, 1931). Nonetheless, the lack of party labels opened the door for new criticism as voters had little, if any, information about candidates. Roscoe Pound advocated for a new judicial selection plan in his famous challenge to the American Bar Association in 1906. William Howard Taft, back in legal circles after his presidency, joined with Pound in calling for change. According to Taft, seeing men campaign for judicial office was “disgraceful” and “shocking.” Once again reform was on the horizon.

The “merit plan” was introduced during the 1930s by Albert Kales as both a way to hold judges accountable and allow them to act independently in making case decisions (Reddick, 2002). Today merit plans are sometimes referred to as “Missouri Plans” because in 1940 Missouri was the first state to implement one. Merit plans are also associated with other names including the “Kales plan” or “commission plan”. A slightly modified version is used in Tennessee and in that state merit selection is done using the “Tennessee Plan”. In 2008, this is the most popular means for selecting judges. There are now 17 states with comprehensive merit plans and others that use merit selection for some levels of state courts (American Judicature Society, 2004).

Purpose and Process of Judicial Selection

Though the framers of the U.S. Constitution decided that life tenure was the best way for federal judges to be insulated from the effects of political pressure, states reached very different conclusions (American Bar Association, 2000). State representatives felt that elected judges would increase public trust in the judiciary and would instill greater public respect for the institution (Croley, 1995). However, legislators failed to recognize the adverse impact that politicization, campaigning, and fundraising would have on the reputation of the judiciary (e.g., see *John v. Orth*, 1835). Modern judicial elections are increasingly politicized. As judicial election competition increases and campaigns become fiercer the public is more likely to demand judicial accountability (Dubois, 1984). To answer these calls, state legislators may turn to programs like JPE to sate citizens' desire for careful oversight in the courts.

But officers of the court have to reach the bench before they can be evaluated. There are three reasons for judicial selection in state court systems: 1) to fill a vacancy created when a judge retires, resigns, or dies between elections; 2) to select a judge for a full term; and 3) to seat a judge following the completion of a special term (Rottman & Stickland, 2006). The values of independence and accountability are important even before a judge reaches the bench and remain important when a judge is off the bench, in his or her everyday life (Dreschel, 1985). The precarious balance of judicial values means that accountability is emphasized more in competitive elections while appointment mechanisms tend to make independence more salient (Dreschel, 1985).

Figure 2 depicts the various levels of courts and relevant selection systems. The majority of state courts of last resort are staffed through merit selection or through non-partisan election.

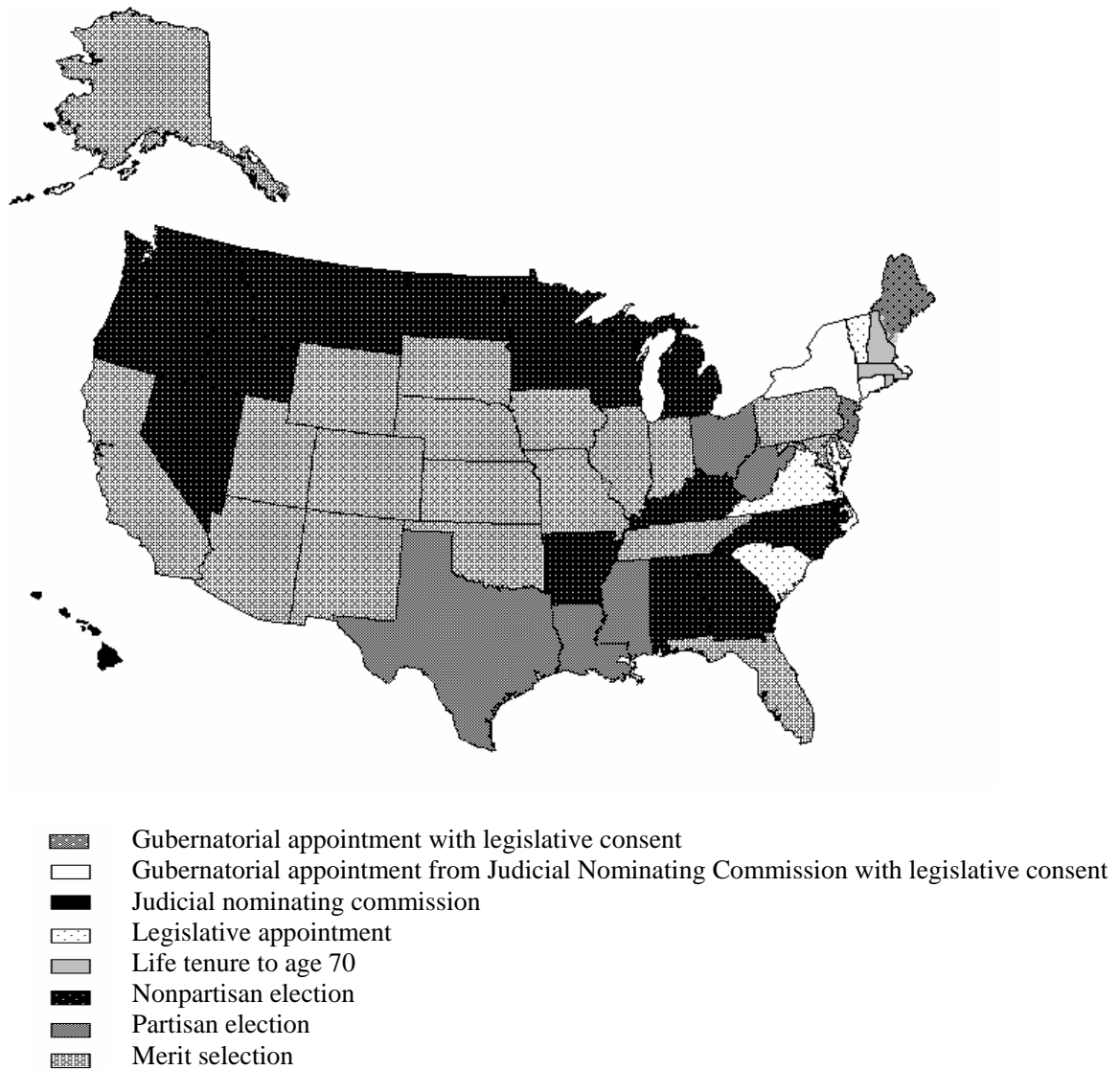
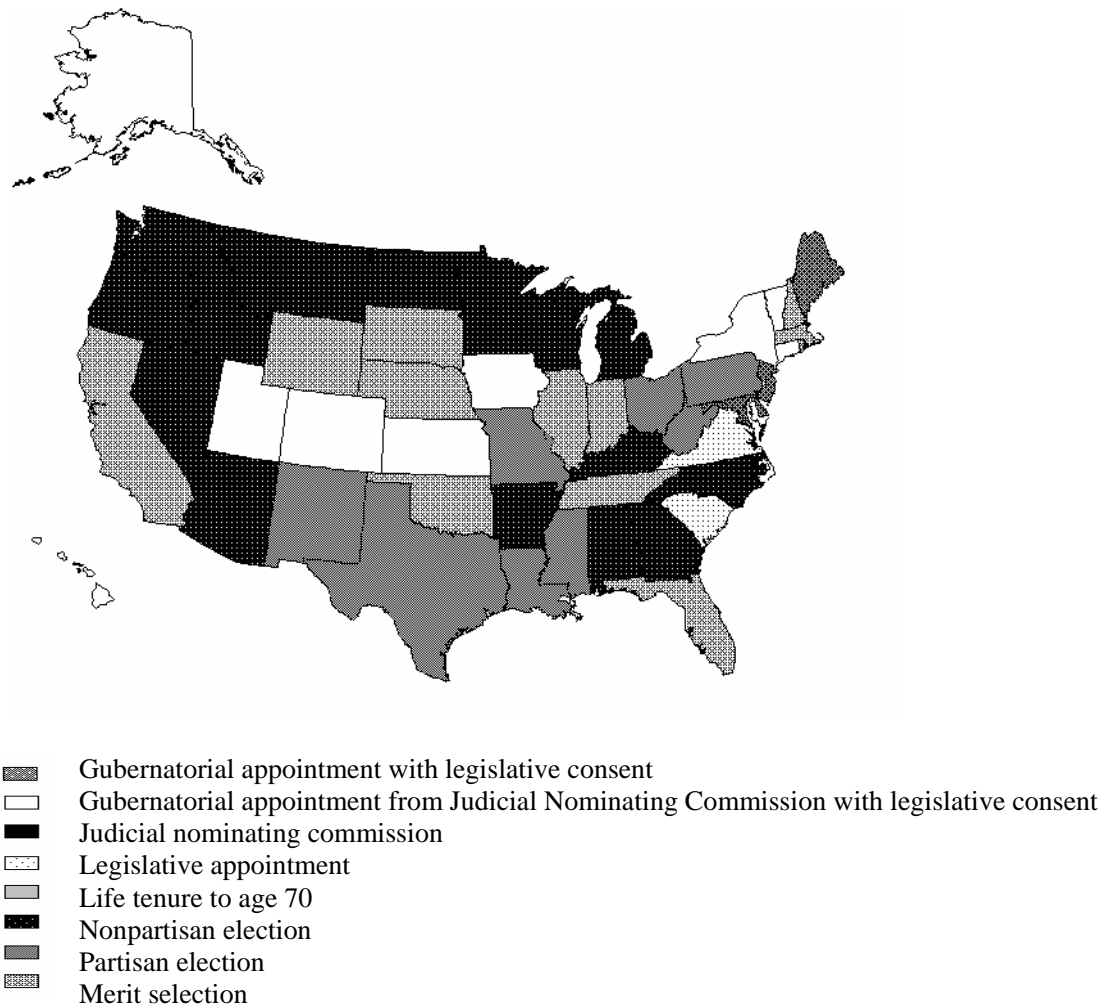


Figure 2. Selection Systems for State Courts of Last Resort
Source: American Judicature Society (2004)

Studying judicial selection by looking only at studies of state courts of last resort allowed researchers to avoid issues that arise with mixed selection systems (see Figure 3) within states. This is a major issue in studying JPE programs because of the way the evaluation systems are designed. In some states JPE ratings are given for all judges in a state court system while other states implement the policy only at the trial level and still others rate only a single level of judges (for example, Tennessee only assesses appellate judges and Idaho conducts JPE only for magistrate judges). Therefore, understanding what selection system is in place for the judge being evaluated is important for the context of the study.

Judicial studies are linked by three important factors: many state-level cases are decided by state courts of last resort; jurisdictions are statewide and therefore comparable, and the research progressed to a point that comparisons between studies could be made using state appellate courts as the unit of analysis. Since Flango and Ducat (1979) cautiously suggested that Missouri plans showed promise, a wealth of research has been conducted on judicial selection systems. Some scholars considered how social characteristics of judges impact their decisions (Volcansek, 1982) while others honed in on communication between judges and the media (Dreschel, 1985); diversity of gender and race on nominating commission decisions (Esterling & Andersen, 1999; Henschen et al, 1990); political factors (Martin, 1993); and external influences from actors in the legal subsystem including those from bar associations and lawyer commissions (Sheldon, 1994). However, much of this research fails to address the

mixed types of selection system designs that permeate state trial courts thus leaving us with an incomplete understanding of how selection processes affect judicial outcomes.

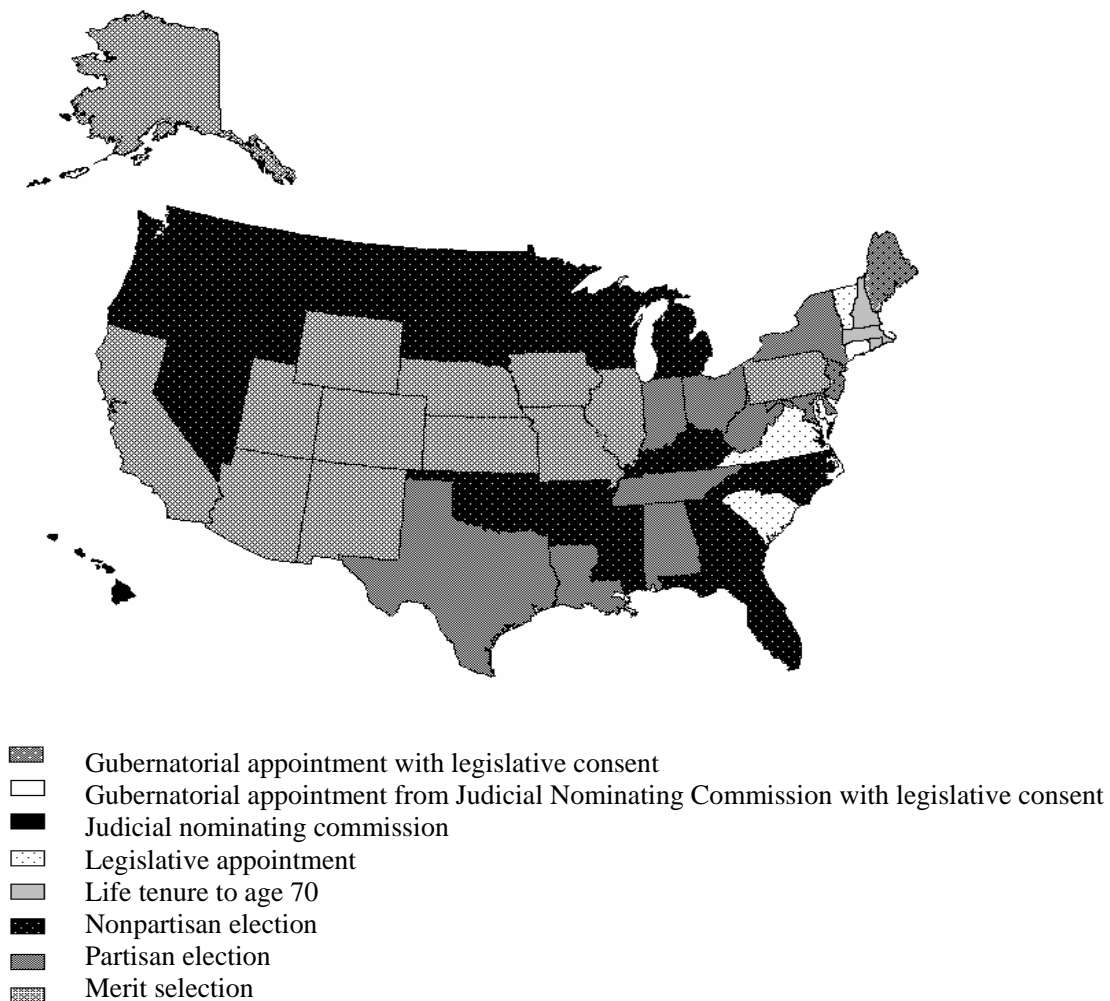


****Note:** There are dual selection systems in use in several states including Arizona, Arkansas, Missouri, Oklahoma, and South Carolina. The selection system shown in this figure represents that which is predominant in the state.

Figure 3. Selection Systems for General Jurisdiction Trial Courts

Source: American Judicature Society (2004)

As shown in Figures 3 and 4, there are several different mechanisms used within states and to make matters even more confusing judges can be chosen one way and then retained by a different process. Figure 3 specifically deals with initial trial court *selection*. Judges are chosen by political contests, nominating commissions, and merit plans.



****Note:** There are dual selection systems in use in several states including Arizona, Kansas, Missouri, and South Carolina. The selection system shown in this figure represents that which is predominant in the state.

Figure 4. Retention Systems for General Jurisdiction Trial Courts

Source: American Judicature Society (2004)

Several interesting conclusions can be drawn from these maps. Most states have the same method for selection and retention of judges at both the appellate and trial court levels. In the states that use different selection systems for full term appointments and retention, a hybrid system is usually in place. In Arizona, for example, only Pima and Maricopa counties reach the threshold population of 250,000 people mandated by the legislature for merit selection. The other 13 counties in the state use nonpartisan elections to select judges representing them. In three states, (Massachusetts, New Hampshire, and Rhode Island) governors appoint judges until age 70 with good behavior. In these states a judicial term expires only when the judge dies, resigns, or is forcibly removed. Finally, consider Kansas or Tennessee as examples of the difficulty in designating a state in one category or another. Kansas uses a hybrid system for both initial selection and retention. Tennessee uses different systems at the appellate and general jurisdiction levels.

Given the complexity of state selection systems, the issue of classifying a state as a “merit” state has been understandably contentious. The issue is further muddled because states have created selection plans using the elements of merit selection most attractive to them without adopting all eight basic elements³ Walter B. Spencer suggested for Missouri Plan selection systems in 1931 (as quoted in Flango & Ducat, 1979).

However, the typical features present in Missouri Plans have been summarized and condensed to three commonly found features: 1) permanent, non-partisan commissions with both attorney and non-attorney members recruiting and screening

candidates in most merit states; 2) commissioners are usually appointed by both public and private officials; and, 3) an executive (most frequently the governor) then makes a judicial appointment from a list of candidates submitted by the commission (Flango & Ducat, 1979; Caulfield, 2004).

In states without merit selection processes, overt political activity is a factor in judicial activity. The degree of politicization can vary according to the type of election in play. Some elections are retention only, some employ partisan political tactics, and others are competitions without political party identification. Even the stakes differ from state to state: judicial term lengths vary as some judges have lifetime tenure and others must run re-election campaigns on a regular basis; divergent requirements for gaining a judgeship exist across the states; and, some states require judges to attend judicial colleges. With the great variation in process, requirements, and selection systems, there are many possibilities that may contribute to state decisions to adopt JPE.

Despite the differences in state merit selection plans, there are also some similarities. In most cases, retention elections are held to determine if the judge will stay on the bench. In some states, for example, Connecticut, the Commission reviews the judge's performance and determines whether re-appointment is recommended or not. In New Mexico, partisan elections are held during the first term after appointment followed by retention elections during the remainder of the judge's tenure. In the case of Rhode Island, the judges are granted life tenure (American Judicature Society, 2004).

Judicial campaigns, partisanship, and elections

Carlton (2003) referred to judicial election campaigns as “corrosive.” Judicial scholars have focused repeatedly on the competitive nature and growing expense of judicial campaigns (e.g. Bonneau, 2004; 2007a; 2007b; Cann, 2007; Farmer, 2001; Glaberson, 2000; Lewis, 2002; Lovrich & Sheldon, 1984; Sheldon & Lovrich, 1982). Voters, who are the potential selectors of judges in many states, are not likely to participate in the process (Baum, 2003). Charles Geyh (2003) refers to the “Axiom of the 80” in describing public apathy for judicial races: “Eighty percent of the public favors electing their judges; eighty percent of the electorate does not vote in judicial races; eighty percent is unable to identify the candidates for judicial office; and eighty percent believes that when judges are elected, they are subject to influence from the campaign contributors who made the judges' election possible (page 43).”

Accountability is also threatened by less competitive judicial races. That is, there are fewer votes cast when negative, politicized campaigns erupt. The lower importance citizens assign to judicial races, in comparison to elections for state or federal executives, can mean that participation is simply not worthwhile (Baum, 2003). The number of uncontested judicial races at the state supreme court level is correlated with less competitive races for judicial seats and is the result of negative reactions to caustic campaigns between competitors (Bonneau, 2004).

Bonneau preliminarily found, at least in competitive races, voter apathy can be attributed to campaign fatigue or simple ignorance. Bonneau’s finding, on the other

hand, suggests a threat to judicial accountability; that is, judges may defer to what they believe constituents want their rulings to be rather than to make decisions based on the law and legal precedent. Rhetoric among attorneys, judges, and scholars would lead one to believe that merit selection systems are more likely than election systems to result in an independent judiciary. However, this may not be the case (Bonneau, 2004; Gann Hall, 2007). This debate is not about voter turnout; no matter how many voters participate in the election process, when races are contested, judges seem to make normative rulings based on perceived community standards rather than rulings bound by legal standards.

Oregon serves as one example of a judicial selection reform state. The Oregon system, which changed in 1982, combines a nonpartisan selection process with a separate election date for judicial seats. Lovrich and Sheldon (1984) attempted to discern whether an informed electorate positively influences the outcome of Oregon's judicial elections. Drawing on previous research on U.S. foreign policy (Almond, 1961) the authors extended the analysis of public opinion on policy decisions to judicial elections. They specifically considered how an informed and interested public impacts democratic policy making through judicial elections.

Voters who feel "informed," despite the subjectivity embedded in this feeling, are more likely to participate in judicial elections (Sheldon & Lovrich, 1982). In general, when one feels prepared to undertake and complete a task he or she is usually more able to engage in it. This type of efficacy may be a good indicator of whether one might participate in the process. To gain this feeling of assurance voters need access to and

trust in information about judges being selected through the election (even retention elections) process.

However, there is another side to consider when thinking about how judges educate potential voters about their ability to administer justice. The landmark case decision on judicial campaigns, *Republican Party of Minnesota v. White* (2002), allows candidates to announce views on issues that may end up in courts. Though candidates can opt to make prospective voters aware of their stance on issues, doing so clouds the process by increasing the likelihood that politicization will play a role in judicial campaigns.

Allegations frequently arise to suggest that campaign contributions affect politicians, including those that end up on the bench (American Bar Association, 2000). In 1995, ABC News featured a report on damages awarded when every member of the Alabama Supreme Court won re-election after receiving campaign contributions from the winning plaintiff in a large tort case (Christensen, 1995). But that case is just a single snapshot, even more damaging is the finding that between 1995 and 1999 justices whose campaigns were funded by plaintiff attorneys were opposed to arbitration while justices whose campaigns were funded by businesses favored it (Ware, 2001). At least in Alabama, it appears that justice is for sale and the highly prized values of independence and accountability are threatened.

State budgets and the courts

State financial conditions affect courts significantly. In 2004, the Bureau of Justice calculated at the percentage of the total state budget allocated to the court system. States spend relatively few dollars on operating courts with a range from 0.33 percent of the total state budget (South Carolina) to a high of five percent (Utah).⁴

In 2006 many states reported significant increases in tax revenues, a few recorded a surplus (Vermont and Indiana), and the overall economic picture looked bright (National Association of State Treasurers [NAST], 2006). After 2006, the economic picture changed again. In the face of uncertain economic circumstances and forecasts courts, like other arms of government, have to adopt strategies to deal with reduced resources.

Court expenditures are largely dedicated to personnel costs with estimates as high as 70-90 percent of justice system revenues going to this line item alone (Hall, Tobin, & Pankey, 2004). Judicial services are impacted by reductions in force and structural changes (Hall, Tobin, & Pankey, 2004). With few slack resources and limited options for decreasing expenditures, courts have only three ways to deal with budget shortfalls: decrease spending, increase revenues, or increase efficiencies (Hall, Tobin, & Pankey, 2004).

Inherent in each of these decisions is a policy choice that relates to the scope of judicial services offered. Courts are not monitored in the same ways that other state agencies are. Though performance budgeting has been around since before the

reinventing government movement gained popularity in the early 1990s, court performance has been traditionally assessed on case outcomes not administrative practices (Bozza, 1998). In many cases, there are neither personnel resources (number of staff as well as number of appropriately trained and/or educated staff) nor equipment (software, hardware, electronic records, case management systems, etc.) to conduct thorough and intensive performance reviews. Even if courts wanted to engage in performance based budgeting, they lack the resources to do it.

Some scholars have suggested that judges are reticent about fiscal oversight, and even about performance based financial management, because they are concerned that being forced to answer to legislators or the executive branch will impugn judicial independence (Bozza, 1998). However, note that judicial independence will be advanced when the court system is capable of effectively handling financial and budgetary management on its own (Tobin and Pankey, 1994).

Osborne and Gaebler (1992) recognized performance measurement as a common denominator of innovative and entrepreneurial governments. Innovative policies can emerge from these environments; in fact, budget restrictions may positively influence the decision to adopt JPE programs. States attempting to increase the effectiveness and efficiency of the system have to think about how best to employ resources, including human resources, available to them. Judges that understand what is asked of them and how to interact with other players in the judicial branch might spur other employees to increased performance. To get the most utility from dollars allocated to the courts, states

might use budget shortfalls as a motivation for innovation.

Nonetheless, financial practices in the judiciary have received little public attention. Consider the last time the media or other outlets featured a court being praised for getting an impressive number of cases through the system? Examples of this sort of positive attention are difficult to find. Scholars in performance measurement are, however, well acquainted with studies on city municipal services or road repair or even how to decrease law enforcement or fire protection response time (e.g., Ammons, 2001).

Public administration and budgeting scholars study performance measurement by examining outcomes. Courts have not benefited from this level of scrutiny. Court budgets are largely invisible to the public eye (Tobin, 1996). The judiciary bristles at being monitored by other branches of government citing threats to judicial independence. Judges expect to adjudicate cases without interference from either politicians or bureaucrats. In their desire for judicial independence, case management is sometimes confused by judges who take umbrage at the idea of interference with any type of court administrative activity (Bozza, 1998).

However, performance measurement can lead to stronger budget requests, better resource management, fiscal accountability (Joyce, 1993; Scheps, 2000) and result in a judicial branch adequately funded by state governments (Bozza, 1998). Despite the difficulties in evaluating judicial performance there are objective assessments available. JPE is one.

Chapter 2 Notes

¹ For examples of jurisdiction in federal and state courts see Appendix A.

² Trial courts of limited jurisdiction are not included in this discussion or in the remainder of my analysis because the differences in jurisdiction and presence of these courts vary so widely across the States.

³ The eight elements from the Spencer plan, first introduced in 1931 are: 1) A commission; 2) composed of judges; 3) and lawyers; 4) and laymen; 5) to submit nominations; 6) to the governor; 7) for appointment; 8) subject to tenure by non-competitive election (as quoted in Winters, 1968).

⁴ The mean judicial budget allocation for all states is only 1.79 percent (Rottman & Strickland, 2006).

Chapter III: Theoretical Considerations

Policy adoption is affected by a host of environmental characteristics including actors who have competing interests, resource limitations, and myriad other factors. Given the kinds of complexities that result from combining the factors related to policy adoption, multiple theoretical lenses could be used to explain the process. Comparative state policy studies are one realm where social science researchers can consider different explanatory models including the garbage can model (Cohen, March, & Olsen, 1972), multiple streams lens (Kingdon, 1995), punctuated-equilibrium theory (Baumgartner & Jones, 1993), the advocacy coalition framework (Sabatier, 1987; 1988), or institutional rational choice (Kiser & Ostrom, 1982; Ostrom, 1986).

Principal-agent theory, institutionalism, and diffusion are also rest within the theoretical arsenal. Each offers a viable way to expand our understanding of policy adoption but institutionalism and diffusion are more comprehensive and powerfully predictive in comparison to other available theories. JPE adoption is best explained by using an institutional lens that includes diffusion.

Table 3 is provided as reference of the theories, the historical roots and academic disciplines providing their foundations, and the major tenets of each. In subsequent sections of this chapter I address these concepts in greater detail both as theoretical concepts and how they relate to JPE.

Table 3. Theoretical & Empirical Dimensions of Institutional Theory

	Principal-Agent Theory	Institutionalism	New Institutionalism	Diffusion
Key theoretical construct	Principal-agent relationships suggest trade-offs between information sharing and risk bearing to achieve goals	Values lend context to institutions. Normative rules allow evaluation of stimuli and organizational response.	Autonomy of political institutions, possibilities for inefficiency, importance of symbolic action	Most members of a social system depend on innovation decisions of others to see how the policy or process of interest spreads among units in a population.
Context (previous studies)	Interdisciplinary ranging from macrolevel to microlevel analyses	Specialization versus organizational capacity in decision-making	Social choices are shaped through organizational arrangements	Spread of policy suggesting regional, motivation, socio-cultural, and political factors influence the spread of innovation
Historical roots of theory (disciplinary source)	<ul style="list-style-type: none"> • Economics (Spence & Zeckhauser 1971) • Political science (Mitnick, 1986) 	<ul style="list-style-type: none"> • Economics (Commons, 1924; Veblen, 1909) • Political science (DiMaggio & Powell, 1983) • Sociology (Cooley, 1902; Weber, 1924) 	<ul style="list-style-type: none"> • Public administration and political science (Meyer & Rowan, 1977; Moe, 1984; Selznick, 1957; 1996; Zucker, 1977) 	<ul style="list-style-type: none"> • Agriculture (Ryan & Gross, 1943) • Public health (Wellin, 1955) • Anthropology (McVoy, 1940) • Political science (Gray, 1973; Walker, 1969) • Public administration (Berry & Berry, 1990; 1992)

Note: Table 3 continues on the following page

Table 3. Continued

	Principal-Agent Theory	Institutionalism	New Institutionalism	Diffusion
Main elements of theory	<ul style="list-style-type: none"> Human assumptions (self interest, bounded rationality, risk aversion) Organizational assumptions (Goal conflict, efficiency is an effectiveness criterion, information asymmetry) 	<ul style="list-style-type: none"> Differentiates formal and informal structures Focus on patterns, coalitions, and cliques Organizations embedded in local community connected by loyalty of personnel and cooptation (Powell & DiMaggio, 1991) 	<ul style="list-style-type: none"> Institutional development or change Institutional maintenance or diffusion Institution itself is a given. Focus on non-local environment with more subtle influence (Powell & DiMaggio, 1991) 	<ul style="list-style-type: none"> Policy spread is dependant on the motivations of actors, resources and obstacles present, geographic proximity, and other issue specific factors.
Key assumptions for theory application	Positivist Principal-agent	Organizations are different from institutions	Rules, norms, and institutions explain societal complexity.	Shared policy relevant characteristics lead to organizational adoption
Most common empirical methods employed to investigate	Theoretical and mathematical models	Multivariate models	Multivariate models	Event history analysis
Primary unit of analysis (previous research)	Contract between principal and agent	Organization	Organization	Varies among organizations including American states

Sources: Author; literature cited within table.

Principal-Agent Theory

Principal-agent theory is a valid and appropriate approach for studies in public policy. However, it does not adequately address state decisions to adopt JPE programs because (1) clear roles for principals and agents do not exist (2) the hierarchy of state court systems is disjointed, and (3) concepts of bounded rationality in decision making do not accurately capture the decision making process for adopting JPE. Principal agent theory can be analyzed using complex formal models and mathematical proofs focusing on factors like self interest, goal conflict, and the trade-offs between efficiency and effectiveness.

Historically, principal-agent theory takes its roots from examinations of information and risk sharing in insurance claim payments (Miller, 2005; Spence & Zeckhauser, 1971). The basic idea of the theory goes back to Simon's zone of acceptable control where an individual unit is willing to be subjugated to another with higher levels of authority (Simon, 1957). As the name suggests, principals and agents play essential roles here. Determining the identity of principals versus agents is a critical part of agency theory.

According to the theory, a set of incentives, set by the principal, will motivate an agent to contribute efforts designed to reach the objectives of the principal. Principals want to achieve some goal but are incapable of doing so without help, without an agent. Agents have the means to help the principal achieve the goal but are not necessarily motivated to do so. Most commonly associated with economics, the focus of principal-agent theory is on how to get the agent to act in the best interest of the principal when the two have different levels of information and motivations. To accomplish the desired

outcome, the principal contemplates then enters a contractual relationship, either real or metaphorical, with an agent. Thus, principal-agent theory is based on the idea of trade-offs

The literature pays less attention to principal-agent relationships at the organizational level than to individual relationships (Lindquist, Haire, and Songer, 2007: 609). The contract becomes the unit of analysis for these studies. However, when organizations are the unit of analysis scholars must remember that these relationships are bigger and more complex than the traditional superior-subordinate dyads most commonly discussed (Mitnick, 1992:88).

Moe (1984) focused on organizational relationships asserting that the strength of agency theory lies in its ability to clarify issues surrounding the use of hierarchy. However, making detailed assumptions to clarify relationships means that the models can become focused on minutiae (Moe, 1984). As a result, researchers are cautioned that applying agency theory directly to public sector questions is much different than using it to analyze private businesses like the insurance industry (Moe, 1984). The lack of free market incentives removes the motivations and constraints that drive private firms (Moe, 1984). Without the constraints and motivations of the free market, public organizations (and the hierarchies therein) have very different goal setting and management activities than private firms. Moe further elaborates on rational-choice institutionalism by observing that it emphasizes formal mechanisms of legislative control to the exclusion of indirect, unintentional, and systematic methods (Moe, 1987). Informal channels and mechanisms for communicating within the institution are ignored in these models (Moe, 1987).

Despite its explanatory power, the principal-agent relationship is challenged by several issues. First, having different, often asymmetrical, levels of information complicates interactions in the agency structure. If the principal lacks information about the true ability of the agent problems including contract issues, hiring someone unqualified or unable to deliver the desired product or disagreements about the value of the agent can result. Second, principals also must monitor agent progress and behavior. One way to do so is to conduct performance measurement studies. Performance measurement can be costly and difficult as it both impacts the real use of resources and introduces the specter of opportunity costs associated with not pursuing other alternatives. Third, the sheer complexity effort required to solve a problem presents risks for all involved. One solution principals use to overcome these kinds of challenges is to create incentives that align agent interests with their own.

Scholars from a variety of fields have employed agency theory in their research (e.g., Eisenhardt, 1989; Fama, 1980; Fama & Jensen, 1983; Mitnick, 1982). The identity and role of players in agency relationship leads to how research questions are specified, study design, and model development.

When principal-agent theory is applied to the judicial branch it is most often used to consider hierarchical relationships found at the federal level (Mitnick, 1980; Moe, 1984; Chubb, 1985; Waterman and Meier, 1998) and is generally focused on how the Supreme Court (principal) assigns tasks to lower courts (agents). Goal conflict arises with demographic variations and information asymmetry (Lindquist, Haire, Songer, 2007).

However, other studies of court interactions have featured single cases as the unit of analysis (e.g., Songer, Segal, & Cameron, 1994; Cameron, Segal, & Songer, 2000).

The structure of the American court system precludes holistic study of principal-agent relationships throughout this third branch of government. In turn, state policy decisions affecting administrative or managerial functions of the judiciary often lack the qualities found in principal-agent relationships found in the literature (e.g., Bertelli & Lynn, 2004; Meier, K.J., 2004; Mitnick, 1982; Raymond, 2006).

Application of Principal Agent Theory to JPE: No Clear Principal or Agent

Properly identifying the roles organizations take on can be problematic when agency theory is applied to public entities. Research from a variety of disciplines including public administration (e.g., Frederickson & Smith, 2003; Wood & Waterman, 1994) supports Moe's observation that public organizations are populated by multiple agents with conflicting goals (Moe, 1984). The explanatory power of this theory is dampened by this facet of agency.

JPE programs can illustrate this point. When American states adopt JPE programs, identifying appropriate roles for actors within the policy system is a difficult task. Who is the principal for JPE? The voters? The presiding judge? Survey respondents? Using legislatures and judges as agents makes sense. Some might argue that the legislature would be the principal since it can adopt the policy. However, in some JPE states the programs exist by order of the state Supreme Court and are not legislated into existence. In those instances, goal conflict may arise with the change in perspective of the different

agents. In short, there are no easily defined principals or agents for JPE programs; the groups can vary depending on the perspective of the person considering the question and the adoption circumstances or impetus.

Voters could be considered principals if the purpose of JPE were isolated to its use as an accountability tool for citizens to use to select or retain the judiciary. But when JPE is used for the purpose of judicial self-improvement or as a part of the management scheme for the court, the presiding judge and administrative officer of the courts become the principals. To further complicate matters, at least from the perspective of principal-agent theory, most official JPE programs now implemented by the states have the dual focus of judicial self-improvement and voter education. In cases where this dual purpose does not exist (e.g., Tennessee), the accountability component is missing meaning that voters never see evaluation results.¹

Agency theory was used in at least one recent article to explain resource allocation and oversight procedures within the judicial branch (Lindquist, Haire, and Songer, 2007). However, federal courts are the unit of analysis in that study. As previously noted, the federal courts have very different structures from state courts. That structural difference is important to how agency theory explains relationships at the federal level but not in the adoption process of state court JPE programs.

The federal judiciary is a hierarchical system in which U.S. Supreme Court justices essentially oversee the federal circuit courts which in turn oversight to the district courts (Fiss, 1983). The lower levels look to the Supreme Court for guidance. This tradition,

known as *stare decisis*, resulted in the development of cultural norms and practices that govern the organizations within the system. When lower courts make rulings outside the boundaries established by precedent, the upper court can see this as a type of defection from established supervisory controls (Lindquist et al, 2007). Whereas principal-agent theory applies to federal courts because of their hierarchical nature, state court organization and the disjointed nature of the state court systems means that identifying a principal and an agent at the organizational level is inappropriate, thus rendering principal-agent theory ineffective for explaining state policy adoption within court systems.

Moreover, to study whether principal-agent theory is appropriate to explain JPE adoption consider the differences in states that use partisan or nonpartisan elections to choose judges² as compared to those using different selection systems. In election states, the principal is really neither judges nor the respondent groups evaluating them. In election states, principal-agent theory does not apply because the principals would be voters who have very little control over judges and court administrators that would function as agents in running the day-to-day transactions of an effective judicial system.

Principal-agent theory requires that principals delegate tasks to an agent so that a tension arises making the agent consider whether s/he will act in the principal's best interest or in his/her own. Bounded rationality, a component associated with principal-agent theory, only allows consideration of a single factor at a time – even when there are multiple issues simultaneously at work (Egeberg, 2003). In some states voters determine who will sit on judicial benches but have no influence over how these judges interpret and apply the law or in how they manage cases or court resources.

Voter influence on judicial decisions is often intangible and specific to a single case or issue such as an unpopular decision in an emotional case. Expecting that voters will operationalize issues similarly so that case decisions and management choices represent directives for judges to carry out is a questionable and somewhat unsophisticated assumption for researchers to make. Voters can not consider all of these issues at once when principal-agent theory is used to describe their decision making process.

When a JPE program is adopted, a state undergoes a complicated, multi-layered process with many participants and complex relationships; principal-agent theory can not adequately describe this innovation. Principal-agent theory may be more appropriate to explain JPE implementation than adoption. For example, one might use principal-agent theory to explain power and span of control in the relationships between stakeholders in the judicial systems. But adoption is an organic process better explained by institutionalism and diffusion.

Institutionalism

In contrast to principal agent theory, institutionalism offers a way to think beyond a single organization or the individuals (and their associated relationships) that staff them. It addresses broader systems that exist within the policy adoption context of JPE. This includes, but is not limited to, the various perspectives of stakeholders with interests in the institution in question and the normative values that bring these organizations and people together. Diffusion extends institutionalism through sophisticated predictive modeling that allows policy to be studied over time.

Institutional theories are now well established and widely accepted by political scientists and scholars in other areas of the social sciences (Scott, 1995). Because institutional theories offer a rich, complex way to understand how normative pressures, both internal and external, influence organizations (Zucker, 1977), these are appropriate frameworks for understanding how internal factors such as interest group pressure or resource deployment strategies can combine to induce policy adoption decisions. Shaped by political and legal environments, rules governing markets, cultural norms and belief systems, organizations are the fabric of modern society.

But institutionalism is inadequate for a complete explanation of the pace of JPE adoption decisions state legislatures make. Court systems do not adopt JPE programs; states legislatures do. Though courts are institutional in nature as evidenced by the rule-bound traditions guiding rulings and justice, states are not. But legislatures are organic in nature and are able to change with demographics, shifts in citizen ideology, and resources within. In other words, legislatures respond to environmental cues.

As a result, institutionalism can explain why and how court systems operate, deploy resources in specific ways, mimic behaviors of one another, and engage stakeholders but not why states make policy adoption decisions that specifically affect the judicial branch. Diffusion theory is more appropriate for that purpose. Nonetheless, institutionalism sets the stage for its off-shoot, diffusion theory.

Best described as a framework, institutionalism is constructed by collections of ideas, series of assumptions, or even as languages that guide empirical work (Frederickson & Smith, 2003: 67). Scholarship on the subject is divided into two institutional camps: old

and new. Describing how state and federal systems and agencies work in concert is one way of illustrating the principles of institutionalism. Though federal law transcends geographic boundaries, states are likely to look to one another for signals guiding the interpretation of situations with high political or social cost (DiMaggio & Powell, 1983; Berry & Berry, 1999).

Likewise, courts can be described as institutional entities. The common threads between the courts and cases are similar ideas, shared language, and cultural norms shaping the judiciary and directing officers of the courts and participants in the American legal system on how to act and make decisions. Because state legislators often consult judges and other power brokers in the court system when making decisions about policies that will affect the judicial branch, understanding the institutional norms that govern the courts is also an important component for modeling the forces that lead to JPE adoption.

Old Institutionalism

Old institutionalism is closely aligned with ideas developed by modern sociologists and anthropologists (Scott, 1995). The debate over the scientific method in the late 19th century spawned thoughts generated by the early institutionalists who insisted that economic processes occur in a social framework governed by principles of economics (Scott, 1995). Among the early scholars, three economists (Thorstein Veblen, John Commons, and Wesley Mitchell) were most influential (Scott, 1995). Veblen asserted that human behavior is a product of habit and custom (Veblen, 1909). Commons (1924) used

the transaction cost analysis framework to explain human behavior and Mitchell began the use of empirical data to ground institutional theory (Scott, 1995).

Despite the differences between old and new paradigms, public administration studies often use institutionalism to frame analyses (DiMaggio & Powell, 1983; Selznick, 1996; O'Toole, 1997a; 1997b; 1997c; Frederickson, 1999; Clerkin, 2006; Durant, 2006). Though early behaviorism studies focus on political motivations, the models were less rigorous than those found in modern research designs where surveys, formal modeling, game theory, and other statistical devices are used to deepen our understanding of institutions (Birkland, 2005: 52).

Selznick's Leadership in Administration (1957) is often cited as the source of old institutional theory (Scott, 1995; Selznick, 1996; Terry, 2002). In it, he established the difference between organizations and institutions. The former takes on a special character associated with a "...distinctive competence of a trained or built in capacity" while the latter are "...special organizations...infused with value beyond the technical requirements at hand" (Selznick, 1957: 17-22). Selznick's institution is an ideal type that clarifies that difference between ordinary organizations that are functional groups designed for some purpose and special organizations that that on societal significance.

Members of organizations act with purpose to achieve those competencies or to develop capacity. Managing organizational activities is the special responsibility of leaders who must assess the capacity building process. Selznick (1957) suggests that these leaders should weigh the costs and benefits of the increasing specialization or organizational capacity to make appropriate adjustments in response to both internal and

external stimuli. These responses, or adjustments, become categorized as processes, strategies, outlooks, or patterns that create the institution (Selznick, 1957).

Furthermore, Selznick asserts that values are central to institutions (Selznick, 1957). Understanding the normative axis of organizational structures gives us context in which to evaluate stimuli and organizational response. As new demands arise and are institutionalized, some organizational practices are readily shed while those that remain become the normative underpinnings that define organizational structure. (Broom & Selznick, 1955).

Old Institutionalism Applied to JPE

To illustrate institutionalism consider the case of state court systems and adoption of JPE programs. State courts conform to normative values prescribed by Constitutional language and through values inculcated by professional training at law schools or through organizations like the American Bar Association. Strategies that reflect judicial independence and accountability are driven by the values, definitions, and rules promulgated by these organizations. State court systems operationalize the norms for the system. But state court systems are not independent. This institution relies on the political actors (governor, professional staff, the Administrative Office of the Courts, legislators, and others) for resources. JPE programs are adopted by state legislatures that have control of the resources of the state. So, JPE programs are completely dependent on state legislatures for authority, legitimacy, and resources.

If legislators are to be leading figures within state political environments, then they have the responsibility for providing organizations, and the individuals that staff them,

with the tools necessary to function competently. Legislators have to consider the political landscape including issues like partisan elections, citizen preference, ideology, and system resources when adopting new policies. Further, the decision process can become complicated by term limits and degrees of professionalization of the state legislature. These factors may combine to create an environment in which accountability and independence can be operationalized as judicial performance evaluations. Perhaps, when enough states adopt JPE programs, the presence of these evaluation systems may be an institutional sign of court professionalization that gives voters, or others who select judges, a way to objectively measure “effectiveness” of the judicial branch.

Neo-institutionalism

Early studies on institutions share limited themes. But neo-institutionalism gives the academy expanded opportunities to develop shared understandings and new insights that contribute to a cohesive understanding of how organizations work. Because of foundational work by Meyer, Rowan, Zucker and other notable scholars such as DiMaggio, Powell, and Moe (DiMaggio & Powell, 1983; Meyer & Rowan, 1977; Moe, 1984; 1990a; 1990b; Zucker, 1977) neo-institutionalism is frequently used by public administration and policy scholars.

Modern efforts to address institutional questions are more aligned with understanding how social choices are shaped, mediated, and channeled through organizational arrangements than older schools of thought were. But, what is new institutionalism exactly? W. Richard Scott (1995) provides a useful definition of

institutions that is taken simultaneously from economics, political science, and sociology. He writes “(i)nstitutions consist of cognitive, normative, and regulative structures and activities that provide stability and meaning to social behavior. Institutions are transported by ...cultures, structures, and routines – and they operate at multiple levels of jurisdiction (Scott, 1995: 33).” According to Scott, all of these elements are found in the kinds of comprehensive institutional systems that promote orderly behavior. However, different disciplines use this framework in different ways. Sociologists, anthropologists, and cognitive psychologists key on cognitive-cultural factors, political scientists and early sociologists concentrate on normative factors, and economists tend to focus on regulatory factors (Scott, 1995).

Yet despite the similarities, neo-institutional scholars disagree on some issues. For example, Moe (1984) is much more optimistic about the promise of new institutionalism to create a general rational-choice theory of social interaction than DiMaggio and Powell (1984).

Furthermore, new institutionalism is not merely a recapitulation of old ideas resurging through new research (Scott, 1995). Instead, this theory builds on common definitions and underlying constructs like the idea that organizations can be discrete formal institutions (Congress or the presidency, for example) or defined in broader, less definitive terms where operational procedures, organizational structures, rules, norms, and systems can define the notion of “institutions” (Birkland, 2005).

This more contemporary branch of the institutional framework is an appropriate theoretical perspective to frame our understanding of judicial behaviors including bench

decisions, administrative practices, and other management issues. It is also a useful way to consider how, why, and under what circumstances state legislatures adopt policies. March and Olsen, two preeminent new institutionalists, emphasize the relative autonomy of political institutions, possibilities for inefficiency, and the importance of symbolic action to understanding politics (March & Olsen, 1984).

Regulatory factors of institutions focus on the rules and systems governing behavior and codes of conduct (Scott, 1995). One of the major assumptions of the regulatory view is that coercion often underlies the process. Individuals and groups comply with rules and codes of conduct because it is easier and more efficient to do so than not. The resulting reward comes with compliance, or if not, punishment is doled out for breaking convention (North, 1990). Formalized organizational structures are viewed as a reflection of institutional rules and as an extension of the regulatory school of institutionalism (Meyer & Rowan, 1977).

According to Meyer and Rowan (1977), increased complexity in modern society can be partially explained by rules, norms, and institutions. Again, court systems can help explain this process. State courts have been institutionalized by the language and rules that govern them. The procedures that bring a case to life are steeped in tradition, legal language, and formal, controlled rules (Glick & Vine, 1973). While the regulatory perspective is appropriate to explain procedures and processes used by the judicial branch, it falls short of shedding light on the adoption of JPE programs because this decision happens at the state legislative level rather than as an act of the court system itself.

State court system practices are more appropriately explained in terms of the exchange relationships described by Meyer and Rowan (1977). These scholars propose that loose coupling is a way to describe the connection between multiple systems (Meyer & Rowan, 1977). Weick (1982) further developed this idea by applying the concept of loose coupling to organizational theory as he focused on how ambiguity and uncertainty factor into system behaviors. By developing the term “equivoque”, meaning sense-making, Weick attempted to use policy decisions to explain organizations, their environments, and the relationships within.

Normative factors are the most easily recognized in state court systems. Courts of general jurisdiction fall under the purview of state appellate courts which are tasked with reviewing bench trial decisions. While the courts of last resort seldom hear presentations of fact, they are required to assess whether trial judges acted appropriately in the scope of information allowed into the official court record, interpreted existing laws and precedent according to norms within the specific court system in question, and managed the process as required by rules of civil procedure and trial standards. This oversight ensures that the legal and ethical standards, the normative values, of the judiciary can be upheld. Moreover, appellate decisions are signals for the culture and temperament within a state court system.

Taken en masse, case outcomes offer clues to the institutional values and definitions that drive the system. And, these decisions give lower court judges, public administrators, and the public an understanding of the parameters that maintain the desired behaviors, decisions, and outcomes for the court system. Stakeholders participating in a

JPE process – especially attorneys and other judges – could use institutional values to discern whether a judge is appropriately applying legal norms and precedent in his or her rulings, therefore suggesting that he or she is performing to an acceptable standard.

Legislators can use institutional standards rather than responses to public pressure as a way to determine when policy changes are warranted to affect a more accountable judiciary.

The empirical work on institutions largely assumes that the institution itself is a given; focus is then aimed at the effect of the institution on organizational behaviors (Scott, 1995). Scott (1995) says there are two components to modeling institutionalism. The first option is to consider how institutions are developed or changed and the alternative is to look at how institutions are maintained or diffused. I focus on the second question of institutional modeling in my study.

Zucker identified the framework as “...both a process and a property variable” (Zucker, 1977). Institutions as processes emphasize behaviors over time that result from regulatory, normative, and cognitive pressures or systems that explain social behavior (Zucker, 1977). But, when viewed as a property variable, institutions use characteristics of the social system to define themselves (Zucker, 1977).

Zucker also asserts that institutions offer a complex perspective of organizations influenced by normative values arising from both internal and external pressure (Zucker, 1977). At times, she says, these pressures lead the organization to be guided by legitimate elements (standard operating procedures, professional certifications, state requirements, and codes of ethics) that direct attention away from task performance. These legitimate

elements lead organizations to become more similar to one another and increase the probability of survival (Zucker, 1977).

I hypothesize that normative institutionalism is present in state court systems. As codes of ethics and the needs for professionalization increase due to higher case loads, system resources decrease, and public cries for accountability increase, state court systems become more likely to attempt to replicate successes of their peers. This hypothesis can be further extended to include the actions (e.g., expansion of criminal statutes) state legislatures take to ensure court system accountability.

Public pressure drives the direction of the relationships in this hypothesis. Social scientists (Bonneau, 2005; Bonneau & Hall, 2003; Hall, 1987; Hall & Bonneau, 2006) find that as violent crime rate increases calls for legislative intervention in the judicial system increase. That is, when fewer convictions are realized the media and public make the assumption that the courts are “soft on crime.” Higher crime rates may be related to greater public dissatisfaction including citizen perceptions of courts. When crime rates increase, citizens may feel that the courts are lenient in sentencing. So, as a way to increase judicial accountability, and show constituents definitive action, state legislatures pass new laws designed to make the courts, and the state by extension, tougher on crime. One way to assess whether judges are doing a fair, effective job may be to assess their performance in adherence to sentencing guidelines or number of cases overturned on appeal.

It is possible that adoption of JPE will be more likely where crime rates are higher. Socio-economic status correlates with the presence or absence of an informed electorate,

and in turn with the increased possibility that a citizen will experience property crime. When voters who have the capacity for informed decision-making select or retain judges they may expect performance evaluation information, such as that offered through JPE programs, to arrive at a decision. The values and cultural norms dictating the amount of criminal activity a society will tolerate are institutionalized. I test these ideas in my models. Institutional theory also offers a way to test this theory by offering variables like legislative professionalism, changes to court budgets, and judicial selection.

According to the literature, the way we study institutions tends to emphasize variance and process theories (Zucker, 1977). These concepts are outlined in detail by Mohr in his 1982 book, Explaining Organizational Behavior. A discussion of the differences between process and variance theories is summarized in Table 4.

Table 4. Comparison of Institutional Theories.

	Variance Theory	Process Theory
Unit of Analysis	Institution	Events
Variables	IV = precursors DV = outcome	IV= order of events DV = process
Focus on observed effect	Why	How
Importance of Time	Order of events does not matter	Assumes events happen in real time
Other notes	Use abstract variables to establish causal relationships	History matters Social power emphasized

Source: Scott, 1995

The major differences between variance and process theories are the focus on events versus organizations (or institutions) and the inclusion temporal effects in the models. Variance theory is much more abstract with concentration in why something occurs. On the other hand, process theory is just about the steps leading to an outcome. As the name suggests, process theory is an examination of how events unfold relative to the stakeholders and historical inputs that shape the environment.

And so, while the overarching mantle of institutional theory can take two different paths, process theory is more applicable to state policy adoption relative to JPE programs because it allows for the consideration of how values, norms, practices, and rules make the process more (or less) likely. Consider the example of the state violent crime rate as a way to explain this idea. As citizens become more conservative ideologically and politically, their tolerance for violent crime decreases (Bonneau, 2005; Hall, 1987).

I hypothesize that a more conservative state population leads to a lower tolerance among the citizenry for increasing crime rates. JPE programs could increase accountability by allowing those who select judges to have objective information about an individual judge including his or her case management practices and percentage of cases remanded or overturned on appeal. For example, a high rate of cases overturned on appeal might suggest that the judge is not interpreting the law according to precedent and practice of peers in the judiciary. Public pressure is driving the direction of the relationship between cries for court accountability and state legislative action. Hence, the norms governing the policies adopted by the state tend to be more conservative.

As organizations become more similar, or homogenized, they experience in what is termed as “isomorphism”. Hawley (1968) describes isomorphism as a constraint causing a unit within a population to resemble other units facing the same set of environmental characteristics. Meyer and Rowan (1977) assert that isomorphism is the concept driving organizations to adopt practices and procedures of peers. DiMaggio and Powell (1983) further illuminate this idea by focusing on institutional isomorphism and the three categories that define it.

Institutional isomorphism can be coercive, mimetic, or normative. Firms, or organizations, adopt structures similar to one another as a result of the three types of pressures. Institutional isomorphism is driven by the net effect of institutional pressures which increase homogeneity of organizational structures in institutional environments (DiMaggio and Powell, 1983). I eventually focus on normative isomorphism, but nonetheless review the other types to develop the most appropriate theoretical basis to explain JPE adoption decisions.

Coercive isomorphism, as the name implies, involves power sharing relationships in which one organization or player depends on the other for resources (Pfeffer and Salancik, 1978) or direction. When coercive pressures are high (e.g. under federally mandated policies), organizations quickly adopt new structures. Increased adoption leads to the perception of legitimacy which also increases the rate of adoption or diffusion.

The concept of coercive isomorphism also can be illustrated through a description of the funding relationship between local domestic violence programs and state offices of

crime control and public safety. In North Carolina, for example, the Department of Crime Control and Public Safety³ receives all the federal domestic violence funding for the state. The Department then administers the funding using an advisory body that awards competitive grants to local organizations. Recipient organizations are required to conform to specific operational and programmatic standards as a condition of receiving the funding.

When the organizations conform to the norms and values of the Department, the domestic violence organizations become homogenized. Eventually, organizations across the state will have very similar approaches to domestic violence programming as result of the coercive nature of this funding relationship. (This could also be explained using principal-agent theory. However, describing the motivations of domestic violence service providers, or even courts that hear these cases is outside the scope of this study. Therefore, theoretical explanations for behaviors seen in these programs will not be discussed outside the context of this specific example.)

Neo-Institutionalism and Isomorphism Applied to JPE

Turning to the topic of this study, consider whether state adoption of JPE programs is an accurate representation of coercive isomorphism. JPE programs are typically funded by state or private resources. For example, Kansas included a special fee in the authorizing legislation for judicial performance evaluation. Every case heard in state courts across Kansas is assessed a nominal, mandatory two dollar fee that is allocated specifically to the state's JPE program. Federal funds are not used. As a result, the federal government can

not exert coercive power over actors approving or operating the Kansas JPE program.

The state legislature did not coerce the judiciary into implementing JPE because the Kansas Judicial Council, a part of the state court system, lobbied for and supported the docket fee increase (Kansas House Judiciary Committee Report, 2006). Even though the fee revenues are channeled through state accounts, the appropriations are formulaic. The question of whether the program will exist has been decided. Funding JPE is conditioned on the legislation authorizing it so that the legislature can not use coercive power over the judicial system, at least not in this context. No other state uses a funding structure like that set up by Kansas. And, even if one did, the funds are for intra-state use and would never be appropriated by one state for use in another state's JPE program. Finally, because state court systems operate autonomously using rules, laws, and regulations enforceable only within state boundaries, no other forms of coercive power can be used to explain why other states adopt JPE programs.

There is no coercive relationship that adequately explains the diffusion of JPE. JPE programs can not result from coercive behaviors because of the structure of the American court system. Without jurisdiction over state courts, the federal courts have no power to prescribe policies or induce case decisions and no coercion from state legislatures.

Other types of isomorphic pressure may better illuminate the adoption process. For example, peer pressure may be a forceful motivator in its own right and may be described by the term "mimetic isomorphism" meaning the practice of shaping a response by modeling organizational structures or practices of successful peers (DiMaggio & Powell, 1983).

Mimetic isomorphism can be illustrated by unintentional consequences or as indirect processes. But it also can be an intentional act or direct choice like choosing consultants or deliberate replication of an existing program or policy (Traver, 2006). Using strategies identified as “safe” by peers is a way for organizations to manage uncertainty. The implication is that organizational adaptation is more accurately described as compulsive and formulaic than problem solving.

Can JPE adoptions be explained by mimetic isomorphism? Perhaps the spread of JPE programs may be partially explained by mimesis. For example, Colorado uses the same research and survey design consultants as Tennessee and New Mexico (personal communication, Jane Howell, October 01, 2007). Each state uses the recommendation and experiences of the others to enter and maintain contracts with the consultants. In the process anxieties relative to program operation and data analysis are minimized. Moreover, as states have chosen the same consulting groups for data procurement and storage the programs take on similar characteristics in both design and implementation.

Alternatively, mimesis may be stopped or delayed by angst. According to anecdotal evidence anxiety appears to be the driving force that stops or at least slows JPE adoptions (personal interview, A. Conklin, September, 2007; personal interview, N. Ellis, December, 2006; February, 2007; June 2007 personal interview, Jane Howell, July, 2007). Judges and other actors in state judicial systems, especially in states where judges face contested elections for initial selection and subsequent retention, have concerns about protecting raw data from the media as well as potential challengers for judicial seats

(personal interview, M. Ash, February, 2007; personal interview, A. Conklin, September, 2007; personal interview, N. Ellis, December, 2006; February, 2007; June 2007 personal interview, Jane Howell, July, 2007; personal interview, H. Manning, March 2007),.

But, this type of isomorphism is appropriate to explain JPE implementation decisions, not legislative adoption because it relates more to the way the evaluations will be conducted (for example, some states develop a process to evaluate challengers in election states), analyzed, and publicized than to the reasons that legislators approve the program's existence. Furthermore, mimetic isomorphism may help explain resistance to adoption of JPE programs. For example, in North Carolina judges are reluctant to support the program because of concerns over the use of evaluation results by challengers in elections (Ellis, 2006).

One might argue that as states adopt the program and successfully conduct evaluations that more states will sign on, therefore demonstrating mimetic isomorphism. Though that interpretation is plausible it fails to provide the best answer for why adoption decisions are made. For that, I turn first to normative isomorphism and then to diffusion. From those frameworks I am better able to predict the variables that most affect state legislative adoption decisions.

Detailing shared norms, values, languages, and other processes has the greatest potential to explain diffusion of innovations including state decisions to adopt JPE programs. Normative isomorphism can be used to explain the similarities in policy,

structure, or operation between organizations. This, in turn, leads to the application of diffusion of innovations as a way to explain why states would make policy adoption decisions.

Social constructs manifested through professional pressures (for example, agencies that accredit schools) are most often associated with normative isomorphism. Through adopting similar value systems and structures organizations slowly become homogenized. The practices that bind each organization to the others become characteristic of the whole population rather than merely activities of disparate members of the group. The cohesion and unification of expectations are the institutions on which members of the group draw for cues in behavior and performance standards.

For example, similar attitudes and approaches of professional groups or associations (for example, the American Bar Association (ABA) or state bar associations) bring homogeneity to organizations through hiring practices or other contractual arrangements (e.g., ABA Standards on Judicial Conduct or Court Organization). This is normative isomorphism. Socialization through formal education, professional associations, the media, or other means makes organizations more similar and eases the adoption of new technologies because information transfers more easily and internal conditions are more alike. When there is a high level of consensus and cooperation within the institutional environment, diffusion of innovation can be steady and long-lasting. When the institutional environment is contentious or unfocused, adoption of innovation is

slow and tentative (Rowan, 1982).

Diffusion

Scholars have long been interested in how ideas are transported from one arena to the next. Even so, for many years, researchers failed to look outside their own disciplines to see the myriad ways that ideas move between participants. Because the research comes from such different, non-integrated disciplines there is no unified theory of diffusion (Braun and Gilardi, 2006). Environmental characteristics, events (especially those triggering punctuated equilibria (Baumgartner & Jones, 1993) or other agenda setting processes) and the presence of peer group pressure or advice may stimulate adoption.

Though separate and complex in its own right, diffusion theory is a derivative of institutionalism. Institutional scholars explain the process using different phrasing, though similar ideas, as Rogers and the other diffusion scholars. Diffusion theory indicates that the earliest organizations adopting a practice are initially termed “innovators” and later adopters as “laggards” that implement a policy to gain legitimacy (DiMaggio & Powell, 1983; 1991; Meyer & Rowan 1977). Many scholars point to Everett Rogers as the “godfather” of diffusion research. Such studies often begin by citing Rogers’ classic definition of diffusion from his 1962 book, *Diffusion of Innovations*: “...the process by which an innovation is communicated through certain channels over time among members of a social system (Rogers, 2003: 5).”

Rogers carefully notes the difference in diffusion (the spread of an idea) and innovation (something perceived as new to the actors within a social system) (Rogers,

2003). The theory assumes innovation decisions are a part of a five step process including awareness, interest, evaluation, trial, and adoption (Rogers, 2003). Diffusion theory suggests that most members of a social system depend heavily on the innovation decisions of others. Figure 5 illustrates the diffusion process by putting the elements of diffusion in context based on the usual pattern of adoption. Graphs of diffusion patterns are typically S-shaped curves depicting relatively few adopters as an innovation begins to be accepted, acceleration through the middle phases, followed by a slower finish with the last adopters coming on board. Innovation is focused on individual adopters while diffusion widens the scope to see how the innovation spreads among units in a population.

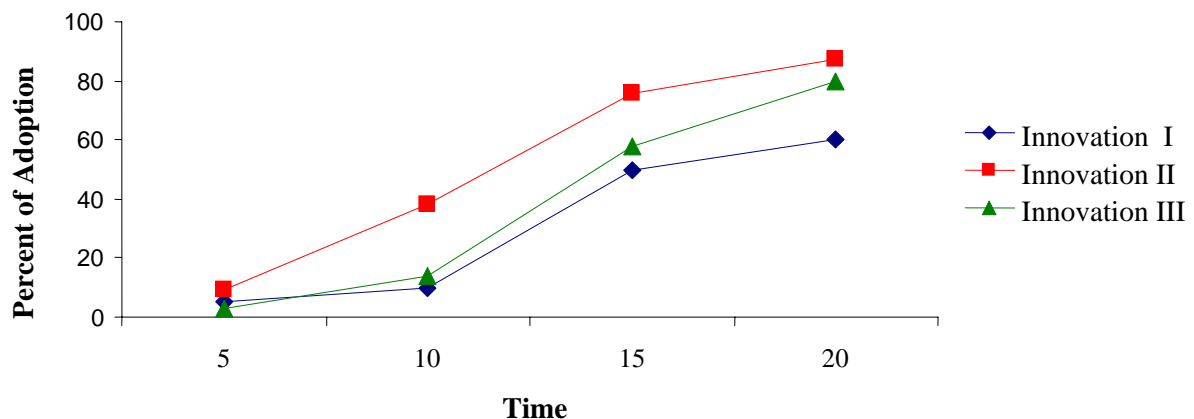


Figure 5. The Diffusion Process

Source: Rogers, 2003: 11

Rogers' work is generally cited as bedrock for diffusion research even though he was not the first to consider how innovations spread. Among the first to study patterns of diffusion in the United States, Edgar McVoy (1940) began by applying principles of

diffusion developed by anthropologists studying primitive tribes to scenarios in the United States. His findings undergird modern diffusion studies because he demonstrated that communication, transportation, urbanization, wealth, education, and cultural “level” positively influence government to adopt innovations (McVoy, 1940).

However, McVoy is not the starting place for most political science, public administration, or public policy diffusion studies. More than thirty years after publication of the McVoy study, Virginia Gray lamented that political scientists had turned little attention toward diffusion of innovations (Gray, 1973). Gray followed Jack Walker’s (1969) lead by defining an innovation as “...a law which is new to the state adopting it, i.e. it is equivalent to a single adoption (Gray, 1973).”

In using states as the unit of analysis, Gray set the stage for diffusion research that followed. The diffusion model for her 1973 study used the cumulative proportion of adopters of a specific policy to predict the rate of spread of the adoption to other potential adopters within a population and, most significantly, contributed to our understanding of the importance of interaction effects between adopters and non-adopters.

Early diffusion studies focused more on the geographic characteristics of diffusion, suggesting regional factors among states sharing borders make policy adoption more likely. However, current research has moved away from a purely geographic focus, now taking into account socio-economic, cultural, and political factors in the models (Boehmke and Witmer, 2004), as well as the effect of policy networks (Kirst, Meister, and Rowley, 1984).

Diffusion theory has frequently been tested using American states as the unit of analysis (Berry & Berry, 1990, 1992; Gray, 1973; Hoyman & Weinberg, 2006; Mintrom, 1997; Walker, 1969). Even so, virtually any size organization can be substituted (Berry & Berry in Sabatier, 1999). The commonalities in diffusion models support formal hypotheses and methodological choices used in my research.

Existing empirical studies detail the process for state level adoption of innovation as well as the characteristics that make diffusion easier to detect and to study (Dolowitz & Marsh, 1996). Officials may believe they share policy relevant characteristics with some other organization that adopted the policy. The policy diffuses to other organizations, driven by shared political (Balla, 2001; Haider-Markel, 2001), legal (Canon and Baum, 1981; Glick, 1982; Jacob, 1988; Glick and Hays, 1991; Hays and Glick, 1997; Grattet, Jenness, and Curry, 1998) or demographic characteristics (Strange and Soule, 1998).

As legislatures and bureaucrats in the American states go about the everyday business of running governments, they create policies that regularly offer many opportunities for scholars to develop research agendas on how, why, and when policy decisions are made. Along these lines, Berry & Berry (1990) assert that there are three motivations for states to adopt policies including imitation of other states, competition with neighboring states, and responding to citizen desires.

A policy may be adopted because officials want to be competitive with other jurisdictions; for example, to attract economic development (Saiz and Clarke, 1999). Similar to the isomorphism arguments previously discussed, policy adoption sometimes does not occur because states refuse to emulate others as often argued in the case of state

welfare policies (Corbett, 1991; Figlio, Koplin, and Reid, 1999; Brueckner, 2000; Berry, Fording, Hanson, 2003).

Illustrations of the Diffusion Process

Diffusion studies really began to be focused in academic literature with work featuring agricultural advances in the early part of the 20th century. We know that some farmers adopted hybrid seed corn earlier than others (Rogers, 2003). A small minority reaped the benefits of being in the first wave to use the new technology while others lagged behind. Rogers (2003) used these behaviors to create five ideal types of adopters: innovators, early adopters, early majority, late majority, and laggards (Rogers, 2003).

Innovators, described as venturesome (Rogers, 2003), are almost consumed with innovation and seek to be on the cutting edge of technological advance. Early adopters are central to the social system and tend to be well informed, intentional decision makers who consider the experience of previous adopters before determining if an innovation should be adopted by their own organization. The early majority approach adoption deliberately and are less risk averse than the later adopters but not as innovative or venturesome as the early adopters. Skeptics dominate the ranks of the late majority who adopt only when the innovation has been satisfactorily tested in other similar situations. Finally, laggards are last to adopt an innovation, having no opinion leadership, and are steeped in precedent.

To illustrate the differences between the groups consider the example of legal incorporations in Delaware. Legal scholars assert that Delaware is the leading state for corporation law (Francis, et al, 2006; Kamar, E., 1998; Wittman, 2002); this claim is

supported by the state's overwhelming dominance in the incorporation market (Romano, 2006). Corporation law, defined as "...legal rules governing relations between managers and shareholders in for-profit corporations," enables private firms to do business by applying codes with default rules for corporate governance and standard language for alternative arrangements between the parties (Romano, 2006: 210).

That definition aptly describes Delaware's position in the tax incorporation market. In fact, more than half of the largest firms in America are incorporated in Delaware and the majority of firms going public for the first time do so in the state (Daines, 2001; 2002).

Delaware might be considered an innovator because considerable energy is focused, perhaps obsessively, by the state on maintaining this status. There are several reasons for that. The first is purely economic: Delaware gets approximately 17 percent of its annual revenue from incorporation fees and taxes (Romano, 2006). The state is small and has no available resource to replace such a large portion of its income if the incorporation revenue were to decrease or be lost (Romano, 2006). The state deliberately and vigorously updates its corporate tax code to meet the needs of private businesses. Delaware is a "hostage to its own success (Romano, 2006: 213)."

However, other states have adapted their own tax codes to make the incorporation climate friendlier to private business. In response to losing revenue to Delaware, other states are defensively developed postures to quell the movement of corporations outside their boundaries. Given Delaware's status and success, however, it also means that they use Delaware as a template for their own tax law (Romano, 2006). Documented patterns of legal innovations show that other states look to Delaware as a model for their own

statutes; in fact, since 1967 Delaware has been among the first three, usually the leader, in adopting incorporation codes (Romano, 2006).

If Delaware is an innovator, then what differentiates it from early adopters? Organizations or people that are early adopters tend to be respected by peers (Rogers, 2003), usually because of successful implementation of policy adoptions. Delaware was certainly not respected any more or less than other states prior to its adoption of the new statutes favoring corporations; however, states began looking to Delaware for models on incorporation statutes after it established success.

Before Delaware cornered the market on corporate law, the American Bar Association drafted a model act (the Act) on business corporations.⁴ Though this document was available to all states, Delaware took the early risk of adapting it to state law. Other states have looked to the Act for guidance in creating their own law but have also factored in the lessons learned by Delaware. Once the legislation proved successful, other states adopted at the slow then rapidly increasing pace typical of innovation diffusion (Romano, 2006).

The “Directors and Officers” insurance market is an excellent example of this process. Firms were concerned that their directors and officers would be held personally liable for corporation activities because of the 1985 ruling in *Smith v. Van Gorkhom* finding that outside directors were at fault for a merger decision. By 1987, thirty-five states had modified corporate codes to protect directors and officers. The model for the modifications came from Delaware, the first state to adopt this solution to the problem (Romano, 2006).

Critiques of Diffusion

There are three major critiques of diffusion research. The first is that most diffusion studies are biased toward innovation being a positive event. The second criticism concerns how researchers define the parameters for their study. Finally, the third contention is that determining the life cycle of an innovation (how much time to include in the “life span”) can be arbitrary. The following paragraphs provide detailed explanations of the arguments against diffusion research.

Most diffusion studies are premised on the notion that adoption is a “good” thing; that is, researchers assume potential adopters see the innovation in a positive light (Rogers, 2003). However, “change is stressful, even good change (Lynn, n.d.).” Most diffusion research fails to include the possibility that innovations are not adopted because an individual or group sees it as a threat to organizational survival or security. A Pollyanna outlook, where one always assumes that innovation adoption is a good decision, ignores the difficulties adopters face when challenged with overcoming issues like resource constraints and subjectivity.

There are times when adopting a new practice or policy is detrimental. This is known as a pro-innovation bias. A pro-innovation bias assumes that innovations should be adopted by all members of a group and that it should be done rapidly without re-invention or rejection (Rogers, 2003: 106). This is true in part because innovation has a positive connotation. Other reasons for the positive bias towards adoption of an innovation include: (1) diffusion research is often funded by “change” agencies and (2) “Successful”

adoption leaves visible evidence; unsuccessful adoption does not. Success is valued therefore successful programs are more likely to be emulated by other organizations or people.

The pro-innovation critique of diffusion research is especially salient to social programs like welfare reform, and perhaps, JPE because all members of the target population may not want to adopt the policies. Welfare reform can mean that as people are trimmed from the “rolls” in one state they seek residence in bordering states that have more generous welfare benefits. States seeking to minimize welfare expenditures might avoid a policy adoption that offers expanded educational or child care benefits to program recipients out of fear that the program will attract new residents and increase state expenditures on welfare.

In North Carolina, where judges are selected through non-partisan elections, JPE has yet to be adopted. Negative feelings of key stakeholders may be among the reasons the program has not diffused to the Tar Heel state. For several years the North Carolina Bar Association has worked to start a JPE program in the state. Attorneys from large, powerful firms joined with a small cadre of judges and state court employees to discuss JPE and how it could work in North Carolina. However, after many meetings and more than three years, the program remains to be tested. A pilot project has been stalled for more than 18 months because of political pressures from judges at all levels of the state judiciary. Key endorsements from judicial leaders (e.g., the chief justice of the state supreme court) are

still outstanding.

It appears that judges are reluctant to endorse the program because of fears that challengers in election races will access and use the evaluation data for political purposes. Judges are afraid that challengers will not, and can not, be effectively evaluated on the same criteria as they are and so rather than trying the innovation, the judiciary and influential members of the bar association thus far have been able to prevent adoption and implementation of JPE in North Carolina (Ellis, N., personal interviews, December 2006, February, 2007, March, 2007, May, 2007, June, 2007, September, 2007).

Judges who will be evaluated may not see these tools as beneficial; those selected through partisan or non-partisan elections may be especially opposed to the program. JPE processes can threaten incumbent judges in election states who fear the political fallout of publicly released evaluations. Even with positive evaluations or recommendations for retention, these judges are incumbents running against challengers who usually have not been subjected to the same level of scrutiny as a sitting judge⁵. In situations where major stakeholders such as judges or legislators see the innovation negatively, JPE adoption may be postponed or prevented through interest group pressures. Future research should address these kinds of issues as well as those currently included in diffusion models.

Researchers also face problems when specifying the parameters for a diffusion study. Diffusion research is sometimes criticized because identifying the meaning of the innovation being studied is often subjective. Though this critique is most widely leveled at studies of technological advances (Gold, 1981), appropriately defining the scope of the

innovation is a critical concern for any study. To determine the scope (or what should be associated with the innovation) researchers should consider whether the innovation has significantly impacted the area it has been applied to, if spread of the innovation has been inhibited by potential adopters' fear or reluctance to undertake it, and if changes in the diffusion rate are because of the innovation or if these rates are spurious (Gold, 1981).

Both of these critiques impact the adoption decision and any models attempting to explain them. My study of institutional adoption assumes the entire state population could be affected by a JPE program. Using the state as a unit of analysis is appropriate, given that assumption. I choose proxies for adopter fear by following the literature and check for spuriousness by using various statistical techniques I will discuss later. For example, I test the effect of public pressure for court reform and accountability by including a measure of violent crime with the hypothesis that as courts are seen as "soft on crime" more cries for reform will register with legislators who take action to create tougher laws or more programs to deal with criminal activity.

Finally, diffusion studies should include temporal effects because the spread of an innovation is not static. It happens over time. However, diffusion researchers have to grapple with determining when time begins. In the context of manufacturing or medical studies finding an appropriate starting point is easy: time begins with the "birth" of the case. Whether the focus is on a new type of water purification device or tracing a disease, the analysis begins with the first day of "life" of the object. But tracing policies in social science is much different. The birth of an innovation could begin with a single

conversation or with the passage of an act or law. Setting the start time is an almost arbitrary act of the researcher and one open to criticism.

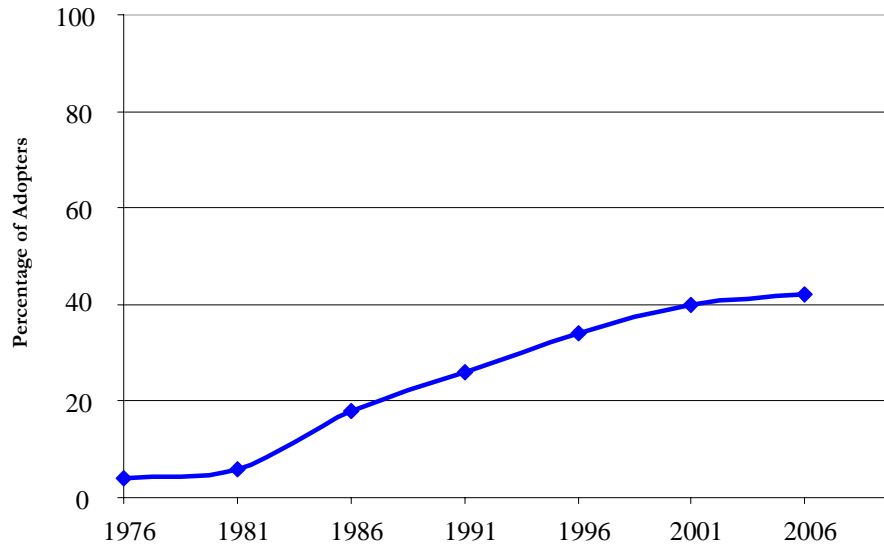
Diffusion Applied to JPE

According to Mahajan and Peterson (1985), diffusion studies have generally fallen into three categories. The first set of analyses was early studies describing diffusion events. Using explanatory methods, these studies yielded the ideas and variables tested in subsequent work. The second set of analyses produced normative models that provided insight into how a program or policy should be marketed. Third, the most common use of diffusion theory today is for prediction. Forecasting models use characteristics of an environment and resources available to prophesize likely diffusion rates and patterns.

Though many innovation studies are chosen because of the rapid pace of adoption (Rogers, 2003: 111), that is not the case for JPE. In fact, after 31 years only 20 states have official JPE programs. Anecdotal evidence (see Appendix A: Interview notes) suggests both citizens (voters) and judges believe the program works but those beliefs were not the norm in the early days after adoption. Judges in many states were skeptical of the validity, reliability, and confidentiality of the evaluation program (see Appendix A). Positive results have converted early nay-sayers and may be an explanation for the increasing pace of adoption over the past 10 years.

Despite the recently increasing number of JPE programs, the rate of adoption has been relatively slow compared to diffusion patterns in other studies (Walker, 1969; Gray, 1973; Berry and Berry, 1990; Mintrom, 1997). Only three states adopted the innovation

during the first decade after its appearance in Alaska as illustrated by Figure 6.



*N=21 through 2008 and includes Kansas; N=20 from 1976-2006

Note: Kansas (adoption in 2008) is not coded as a JPE state in the multivariate analysis

Figure 6. Cumulative Percentages of JPE States

Source: Author's calculations

After 15 years, there were only nine JPE programs. Eleven states, or more than a 100% increase in half the time, approved programs in the fifteen years that followed. So, the rate of adoption continues to rise, albeit slowly, as the program becomes more accepted, publicized, and institutionalized. The presence of a sigmoid curve (s-shaped) suggests that JPE adoption may follow a similar pattern as other diffusion studies (e.g., Berry & Berry, 1990; 1992; Gray, 1975; Mintrom, 2002).

Diffusion studies are sometimes limited because the data are censored meaning that “...information about the duration in the origin state is incompletely recorded (Blossfeld,

Golsh, & Rohwer, 2007: 39).” In my case, the entire population has not adopted JPE. The distribution of the data is not yet known. Data can be left-censored meaning that the data will not allow the past to be taken into account or right censored meaning that all the observations have not been recorded yet. A left-censored data set is problematic while right-censored data are not (Blossfeld, Golsch, & Rohwer, 2007). The data in my study are right-censored so there is no way to know whether the distribution will eventually resemble the logistic curve typically found in diffusion studies. But modeling techniques like event history analysis allow researchers to investigate phenomena like this without serious problems (Blossfeld, Golsch, & Rohwer, 2007).

My study addresses a gap in diffusion literature as it is one of a minority of analyses that looks at moderate or slow paced diffusion process. This research responds to Rogers’ call for diffusion studies that occur before the process has been completed (Rogers, 2003: 112); this might be one step in overcoming the pro-innovation bias diffusion research is sometimes criticized for (Rogers and Shoemaker, 1971; Downs and Mohr, 1976; Eyestone, 1977; Eveland, 1979; Blaut, 1987).

Diffusion theory suggests regional variables, coupled with internal and external factors, will explain the likelihood of state adoption of JPE programs. In their 1990 article, Berry and Berry propose that innovation decisions are caused by two things: internal determinants and regional influences. Prior to this work, these two factors were assumed to act independently (Berry and Berry, 1990). The assumption underlying the segregation of these factors is that regional diffusion does not explain innovation, a theory that departs

from the theoretical frameworks provided by Rogers, Walker, and other early diffusion scholars (e.g., Gray, 1973).

In addition, Berry and Berry (1990) note that it makes little sense to assume that state politicians act blindly without accounting for how the policies of neighboring states impact on internal decision-making processes for the state in question. For those reasons, Berry and Berry (1990) combined internal determinants with geographic variables in their updated diffusion model. In addition, Glick and Hays (1991) contributed to the validation of this idea when they found regional patterns of legislative adoption of policies dealing with judicial systems.

Based on the Glick and Hays study (1991) and subsequent diffusion research, a model predicting adoption of JPE programs should include geographic proximity to other JPE states, fiscal characteristics like court budgets, state fiscal health, and judicial salaries, and political variables including party in control of state government and citizen ideology. Institutional theory adds that interest groups and the political process might create normative pressure to increase the likelihood of adoption decisions. In this vein, measuring the impact of the type of judicial selection system and degree of legislative professionalism could shed light on progression of this program across the fifty American states.

Chapter 3 Notes

¹ The performance appraisal literature (e.g.,) raises questions about the validity of evaluations that combine judgmental and developmental processes. However, this discussion falls outside the scope of this study.

² Of the states with JPE programs in 2006, three (Idaho, Minnesota, and Michigan) use nonpartisan elections to select appellate court judges, four (Florida, Idaho, Minnesota, and Michigan) use this method to select trial court judges, one (Illinois) uses partisan elections for appellate court judges, and two (Illinois and Tennessee) use partisan elections for trial court judges.

³ In North Carolina, the Governor's Crime Commission (GCC) administers federal domestic violence funding for the state. The GCC is situated within the Department of Crime Control and Public Safety led by a political appointee selected by the governor.

⁴ The Act was drafted in 1940, published in 1946, and adopted by the ABA in 1950 (Eisenberg, 1974). Interestingly, the drafters were from Illinois and used statutes from that state as the basis for the Act (Romano, 2006).

⁵ An example of when this might not be true would be when a trial judge is seeking an appellate court seat.

CHAPTER IV: Literature Review

Existing state policy adoption studies have focused on the process itself, features of the policy being adopted, and diffusion of the innovation (Lutz, 1997). Many analyses are built on developing an understanding of the legislative process and linking specific economic, political, and social factors to state legislative innovation. The literature highlights variables such as stakeholder identity, resource allocation, political climate, ideological leaning, and other sociocultural characteristics that make it more likely that an innovation will spread from one state to another. I contribute to this body of research by examining whether these same conditions apply for JPE programs.

After describing my literature review process, I discuss each hypothesis according to the relevant studies that shape it. The twelve hypotheses tested in this study are grounded in reviews of literature from several branches of the social sciences including those from court administration and reform, political science, public administration, and public policy. A list of my hypotheses serves as a reminder of the direction and magnitude of the relationships I predict:

H1a: States where political competition is greater are more likely to adopt JPE.

H1b: States where the violent crime rate is higher are more likely to adopt JPE.

H2a: State populations with a less politically conservative ideology are more likely to adopt JPE.

H2b. States where the Republican Party is in the majority in the state legislature and controls the governorship are less likely to adopt JPE.

H2c: States with higher levels of citizen sophistication are more likely to adopt JPE.

H2d: States with greater degrees of fiscal health are more likely to adopt JPE.

H2e: States with higher degrees of legislative professionalization are more likely to adopt JPE.

H3a: States that use a merit selection process to fill judicial vacancies are more likely to adopt JPE.

H3b: States that use either gubernatorial or legislative appointment systems to fill judicial vacancies are less likely to adopt JPE.

H3c: States that use a non-partisan election process to fill judicial vacancies are less likely to adopt JPE.

H3d: States that use a partisan election process to fill judicial vacancies are less likely to adopt JPE.

H4a: States bordered by a higher percentage of other states with JPE programs are more likely to adopt JPE.

H4b: States with capital cities located geographically closer to other state capital cities where JPE has been adopted previously are more likely to adopt JPE.

Literature Review Methodology

The initial literature review using keywords that include diffusion, innovation, American states, policy change, policy adoption, adopters, decision making, state courts,

judicial performance, judicial performance evaluation, court reform, court administration, event history analysis, and state politics was conducted using Google Scholar and the Social Sciences Citation Index (SSCI). These searches located journal articles and papers on diffusion of innovation, theories that explain it, and the arenas in which it has been applied. Key words from the articles found in the initial searches were then used to develop a more comprehensive search strategy resulting in the final review. I also reviewed material from the following databases: Dissertation Abstracts, Books in Print, Book Review Index, ERIC, Index to Legal Periodicals and Books, Social Sciences Abstracts, and the National Technical Information Service. This extensive review resulted in numerous articles, books and journals that support the methodological, theoretical, and analytical choices made throughout the dissertation process. Results were limited to scholarly, peer reviewed journals or books with the exception of searches for information on judicial performance evaluation specifically. Those searches included information published in media such as newspapers, magazines, and publications that are not peer reviewed.

Studies of state legislatures feature a variety of statistical and theoretical approaches to expand our understanding of legislative activity. However, by limiting search terms to those that encompass only the policy adoption environment, the vast array of information can be reduced effectively. Many of the resulting studies on legislative decision-making feature diffusion theory and the prevalent methodological tool used to test relationships is event history analysis.

By combining both internal and external environmental effects that occur over time, Berry and Berry (1990) offered a new way to think about and model diffusion. I am going to test the Berry and Berry model of diffusion theory with JPE programs. Variables from this seminal study by Berry and Berry were refined and categorized in four groups that include issues of motivation, resources/obstacles to innovation, other major policy changes in a state, and measures of the effect of space and geography (Berry & Berry, 1999). Descriptions of the Berry and Berry (1999) categories are:

- Motivation was defined by triggering events or the perceived severity of the problem within the state.
- Resources and obstacles to adoption are those that promote or constrain innovation.
- The presence or absence of other policies considers how actors have responded to previous situations requiring new policies and what precedence has been set.
- The external environment incorporates how activities of other states or the federal government, for example, might compel policy decisions.

Equation 1. General Diffusion Equation

$$ADOPT_{i,t} = f(MOTIVATION_{i,b}, RESOURCES/OBSTACLES_{i,b}, OTHER\ POLICIES_{i,b}, EXTERNAL_{i,t})$$

I group my hypotheses by the four categories included in the Berry and Berry model (1999). The literature review is organized by the four categories in the general diffusion model which supports my variable operationalization plan (see Equation 1). Table 5 shows the categories, relevant variables, and corresponding hypotheses tested in this study.

Table 5. The JPE Diffusion Model

Category	Variables	Relevant hypotheses
Motivation	Party in charge ratio Public pressure for court accountability	H1a: political competition H1b: violent crime rate
Resources/Obstacles*	Character of public opinion Citizen sophistication State fiscal health Legislative professionalism	H2a: conservatism H2b: political party in charge H2c: citizen ideology H2d: state fiscal health H2e: Legislative professionalism
Other policies	Merit selection system	H3a: merit selection H3b: appointment H3c: non-partisan election H3d: partisan election
External	Geographic distance	H4a: percent bordering states with JPE H4b: distance to nearest state capital with JPE

Sources: Author; Berry & Berry, 1999.

*The model does not include a measure for court professionalization because both trial and appellate courts are included in the analysis. The only existing court professionalization measure (Squire, 2007) includes variables associated solely with state courts of last resort. In addition, even when the 2007 Squire court professionalism measure was included in the model as a time invariant covariate (because of data availability) the measure was not significant. Therefore, to make the model more parsimonious it was not included as a variable in the final diffusion model.

Components of the Diffusion Model

Motivation

Diffusion is shaped by cultural norms and similarities shared by actors in a system (Strang & Meyer, 1993). Cultural norms and values can be represented in many ways including as political ideology, identification with a political party, and socioeconomic status. Early diffusion studies (Walker, 1969) found states with higher levels of per capita income were more likely to embrace innovation. However, this is a crude way to incorporate citizen preference or appetite for innovation, and so a more sophisticated measure of citizen sophistication and ideology is developed here. Motivation is simply defined as the impetus that leads public officials to act and it can be operationalized as the gravity of the issue at hand and often refers to “...objective measures of the conditions in society that come to be viewed as problematic, media attention to the issue, or the salience of the issue, and triggering events, or those events that are so large and significant that they bring immediate attention to a given problem (Chamberlain & Haider-Markel, 2005: 450).”

Existing literature supports the argument that diffusion of JPE programs is influenced by political ideology, party identification, citizen sophistication, voter participation, and societal norms. The specific hypotheses and relevant literature for each follows.

H1a: States where political competition is greater are more likely to adopt JPE.

Policy decisions are inherently political (Moynihan & Ingraham, 2004). Both political competition and political ideology shape decisions in a state policy environment and these two concepts are inexorably linked. Previous studies have shown performance measurement is used less frequently in atmospheres where the power rests with a single political party (Bretschneider et al, 1989). To wit, the more competitive an electoral milieu is the more likely that performance measurement will be an important feature of the policy process (Moynihan & Ingraham, 2004).

Political competition, as defined by Bretschneider and Gorr (1992), is the balance of the party in power in the executive branch and both houses of the state legislature. Some scholars have called this the “best measure of political competition in a state” (Moynihan & Ingraham, 2004) because it avoids the face validity and measurement issues associated with other ways that the effects of political competition have been conceptualized. For example, political party dominance can be measured by using a ratio of the majority party to minority party (Bretschneider et al, 1989) but there are problems with assessing the degree of control of the party at the executive branch level (Moynihan & Ingraham, 2004).

In addition, some have used “cross-branch political confrontation” measures (Moynihan & Ingraham, 2004) to consider how much having a governor from one party while the majority of legislators come from another impacts the business of state

governance. Again, there are face validity problems associated with this measure because of historical examples of noncompetitive behavior in these sorts of situations (Cooper, 2001). Because of the limitations of other options, I follow the suggestion of Moynihan and Ingraham (2004) in using the Bretschneider et al (1989) political competition variable.

H1b: States where the violent crime rate is higher are more likely to adopt JPE.

In early March 2008, a university community was plunged into shock, anger, and then mourning, when its student body president was brutally murdered (Charbonneau, 2008). The death of Eve Carson first grabbed headlines because she was an unidentified victim of crime. The story remained in the public eye for more than two weeks because of her status as student body president and because from all accounts she had a promising future (Hartness, Chou, & Gravely, 2008; Smith, 2008). Police repeatedly suggested the killing was random and often wavered on whether the crime was gang related (Bowens, 2008; Hartness, 2008).

The two men eventually charged with her death were familiar faces in criminal courts across central North Carolina. Adding to the frustration and outrage felt by many citizens, one of the men was charged with murdering a Duke University student weeks before the Carson killing (Chou, Bowens, Lewis, & Owen, 2008). At the arraignment for that crime, a district court judge pleaded with state legislators and the governor to enact legislation designed to deal more effectively with gang-related crime (Carlson, 2008).

The impassioned plea from that trial court judge was a call for reform and accountability. One of the major issues for the judicial system to wrestle with as it deals with these murders is that the suspects have been in and out of North Carolina's courtrooms for years. One defendant is accused of a recent crime spree while the other might have been in jail had administrative issues been handled appropriately (different courtroom locations were assigned on the docket and in correspondence with the defendant causing confusion leading to the defendant not reporting for trial). Whether there is fault with the criminal justice system, sentencing guidelines, individuals, or others remains to be determined, but cries of public dissatisfaction are beginning to register and prompt calls for reform.

Legislators proposing changes to gang laws bemoan sentencing guidelines and question judges that attempt to balance the problems of over-crowded jails with the need to process lengthy dockets (Lamb, 2008). Those judges who are reluctant to accept plea bargains giving defendants convictions on lesser crimes feel the tug between judicial accountability and independence in very real, very difficult ways as they seek to satisfy the public outcries as reported by the media and balance the responsibilities that come with adjudication. Now that legislators are demanding action from the system, reform is more likely to come – perhaps in the form of more money for the judicial branch or tougher legislation (most likely the latter).

Violent crime rate has been used by political scientists as an indicator of public dissatisfaction with state supreme court justices (Bonneau, 2005; Bonneau & Hall, 2003;

Hall, 1987; Hall & Bonneau, 2006). Challengers in retention elections have successfully unseated incumbent judges on several notable occasions. For example, in Tennessee, Supreme Court Justice Penny White was unseated when she was up for retention election soon after a controversial death penalty ruling was rendered (Roberts, 2000). When the crime rate rises the public perception is that the court is “soft on crime” and less likely to hold criminals accountable for acts against society. The idea is that a drop in crime rate is due to fewer reported crimes leading to greater public satisfaction. But in situations where reports of criminal activity grow, public cries for accountability grow louder until someone – the court, legislators, and/or other actors in the executive branch – does something.

I measure court system reform by asserting that perception of a high violent crime rate acts as a triggering mechanism leading to expressions of legislative discontent motivating actions to formally evaluate state court judges. Research implies that extraordinary triggering events, relevance of the issues at hand, and the extent of the problem can directly affect the policymaking process (Baumgartner and Jones 1993, 2002; Haider-Markel and O'Brien 1997; Kingdon 1995).

Resources/Obstacles

The motivation to innovate is affected by the presence or absence of obstacles and the amount of resources available to overcome these barriers to adoption (Berry & Berry, 1991; Mohr, 1969). Some studies have shown competition with other states for programs that expand or create resources increases the likelihood a state will adopt an innovation

(e.g., Berry & Berry, 1990; 1992; Eadington, 1999). However, in the case of JPE, there is no fight for the lottery dollars (Berry & Berry, 1990), economic development projects (Hoyman, 1997), or even federal prison sitings (Hoyman & Weinberg, 2006). Still, resources, financial and otherwise, create incentives or obstacles to innovation. Variables included in this factor are changes to court budgets, state fiscal health, party control, and legislative professionalism.

Politics and policy scholars have spent two decades designing and re-tooling measures of citizen ideology (Berry et al, 2007: 112). Scholars are particularly interested in this measure as a cause of policy change (Berry et al, 2007: 112). More importantly, this measure gives academics a way to understand how state level data can be translated into meaningful scores of ideological tendencies.

H2a: State populations with a less politically conservative ideology are more likely to adopt JPE.

State legislators tend to be elected by citizens who share political ideology with them. Erikson, Wright, and McIver (1993) found political ideology has very little variation over time. According to Erikson, Wright, and McIver, liberal governments tend to be more likely to support government sponsored programs. Based on the Erikson, Wright, and McIver (1993) findings and measures contributed by Berry, Ringquist, Fording, and Hanson (1998), more liberal political environments are more associated with

policy adoption. Ideological change is an indicator of policy mood and it measures both relative positions over time (relative stability) and total ideological turnover within a state (absolute stability). Recently, Berry, Ringquist, Fording and Hanson built on their 1998 construct of citizen ideology to create an updated model that is both reliable and stable by including the effects of time in the variable (Berry et al, 2007: 112). I will use their construct (hereafter referred to as the BRFH measure) in my model. Other studies show enactment of more liberal public policies has been linked to electoral competition (Barrileaux, 1997; Holbrook & Van Dunk, 1993; Robertson, 1976). So, there may be some interaction between electoral competition and ideology in my models.

There is an important distinction between political ideology and citizen ideology. The former is operationalized by scores based on Erikson, Wright, and McIver's methodology (1993) while the latter is based on the BRFH measure (2007); these are actually opposing measures. Erikson, Wright, and McIver (1993) say that political ideology is relatively stable over time while Berry, Ringquist, Fording and Hanson show that citizen ideology includes "temporal variation" (Berry et al, 2007: 113). Much of the literature on state policy adoption uses the Erikson, Wright, and McIver (1993) measure while the updated BRFH variable is relatively new. That is, the BRFH measure suggests that national-level influences explain shifts in state-level ideology (Berry et al, 2007: 114). In addition, performance appraisal is a part of new public management (O'Toole, 1995) and is a conservative tool. Therefore, I use the BRFH measure to evaluate whether a state with a conservative citizenry will resist adopting an official JPE program.

H2b. States where the Republican Party is in the majority in the state legislature and controls the governorship are less likely to adopt JPE.

Hypothesis 2a deals with citizen ideology and in Hypothesis 2b I consider whether elite ideology factors into adoption decisions. Political ideology is a complicated variable. By considering the effects of public opinion, Erikson, Wright, and McIver (1993) analyze whether state policies decisions are tied to political ideology. The authors find the ideological leanings of citizens are highly correlated to liberal or conservative choices made by state actors. In short, when the populace is more conservative, the state is likely to implement more conservative policies and when the public is more liberal the policies reflect this as well.

According to Erikson, Wright, and McIver, American states are the appropriate unit of analysis for understanding public opinion. Because states' populations exhibit a range of political attitudes they provide an opportunity to understand the impact of political structures on public opinion (Erikson, Wright, & McIver, 1993). The real value of the Erikson, Wright, McIver (1993) study is that these authors go beyond the socio-economic variables that have been used so frequently in other studies about state policy. The variables Erikson, Wright, and McIver use attempt to reflect the ideological sentiment of state electorates through usage of state opinion data from pooling CBS News/*New York Times* surveys (Erikson, Wright, & McIver, 1993). These data show differences in ideology and partisanship are highly correlated. Based on various statistical tests, the

sample used is a reliable and valid measure of political ideology. Because the correlations are so strong, the authors conclude state policy decisions are responses to public opinion (Erikson, Wright, & McIver, 1993).

It seems intuitive to note that when more conservative people live in a single state, political actors will also be more conservative and will propose and enact conservative legislation, and that the public policy for that state would be characterized as conservative. However, Erikson, Wright, and McIver (1993) document how policy decisions and public opinion are correlated to provide a sound foundation for public policy and public opinion to be grounded in.

The authors also contrast Downsian ideology to the “responsible parties’ model”. This comparison considers the differences in the factors motivating actors in the two models. In the Downs model, the motivation is simply to win while in the responsible parties’ model broader policy concerns drive the decision-making (Erikson, Wright, McIver, 1993). In the middle of this complex situation are the political activists, who are not members of the party elite and not necessarily representative of the masses from whom they rise; these individuals can drive state policy decisions (Erikson, Wright, & McIver, 1993). These activists start on the outside but quickly move to the inside as they bring the viewpoints of the citizenry to the agenda. The authors conclude political party ideology and public opinion combine to drive the extent of political conflict, motivation, and electoral process (Erikson, Wright, & McIver, 1993).

In typically conservative states, for example in Utah, policymakers that decided to

adopt the JPE program were essentially defecting from the traditional inclinations of legislators in conservative states. That is, adopting a JPE program in a conservative state represents a legislative action that violates conventional expectations of the electorate. JPE programs subject judges, appointed by the merit system but retained through elections, to critique, evaluation, and public commentary. For the process to work effectively, judges have to participate in an evaluation which may not end with favorable results. Moreover, legislators are supporting a program requiring additional state resources, including funding and staffing. JPE participants such as lawyers have to trust the system and that any information provided during the process will remain confidential so that the judges never know which attorney provided specific feedback.

H2c: States with higher levels of citizen sophistication are more likely to adopt JPE.

Early sociologists showed that population density, urbanization, transportation, facility of communication, wealth, and education affect diffusion patterns (Pemberton, 1936; McVoy, 1940). McVoy (1940) found there were positive correlations among these variables; cultural traits and education had especially strong effects on the spread of innovations. However, these are not the only factors that matter.

Citizen sophistication is an index measuring socio-economic and cultural characteristics of the state populations and represents the characteristics of likely voters. Data for this variable come from *The Book of the States* and from the U.S. Census Bureau.

The data were found in a dataset linked to several articles featured in *State Politics and Policy Quarterly* (Lindquist, 2007).

The effects of ideology on policy adoption are tested with multiple hypotheses. In the earlier discussion of political ideology, the variable is centered on how political ideology affects legislator activity. In hypothesis five, ideology is used to consider how ideology affects the way citizens perceive and use information. The idea is that where a culture of performance measurement already exists, citizens will be more likely to expect information about the court system. In that case, it would be more likely that a legislature would adopt a JPE program. The application of this variable is more individualistic. A further explanation of this variable follows.

Citizen ideology scores can be measures of two different types of political ideology. A debate in the literature on the subject highlights the differences in “operational ideology” and “symbolic ideology.” The former relates to policy mood, which is more appropriately used when studying the impact of public opinion on public policy decisions, while the latter is a reflection of individual self-identification, which tends to be more unreliable (Berry et al, 2007: 111).

The BRFH measure has been used in many studies in which the consistent finding is that it is a statistically significant predictor of state citizen ideology (e.g., Fiorina, 1999; Jacobs & Carmichael, 2001; Bradbury & Crain, 2002; Nicholson-Crotty, 2004). Moreover, the authors take great pain to discuss whether the BRFH model is a valid measure of “state citizen ideology.” My study is another attempt at validating this measure. Studying JPE adoption is a valuable contribution to this literature because it

offers an opportunity to shed additional light on this debate about appropriate measures for citizen ideology (Berry et al, 1998; 2007; Brace, et al, 2004) and the Brace et al study (2004). A number of other researchers (Fiorina, 1999; Jacobs & Carmichael, 2001; Bradbury & Crain, 2002; Meinke & Hasecke, 2003; Nicholson-Crotty, 2004) have successfully replicated the Berry et al model showing that the BRFH measure is a statistically significant predictor of state policy liberalism (Berry et al, 2007). As a result, I will employ a measure of operational ideology using BRFH measure to attempt to understand if changes in state ideology influence the adoption of JPE in the American states.

In contrast to other studies (e.g., Brace et al., 2004; Erikson, Wright, & McIver, 1993), Berry et al suggest that state citizen ideology varies substantially over time (Berry et al, 1998). Brace and his co-authors criticized the BRFH measure saying ideological stability precludes the notion that state citizen ideology affects state policy (Brace, et al, 2004). Brace et al find that citizen ideology is relatively stable over time (2004: 357). However, they assert that national trends should be removed from empirical analysis because changes in ideology can not be isolated to changes within a single state excluding national interactions (Berry et al, 2007: 114).

In response to criticism of this suggestion of temporal variability Berry, Ringquist, Fording, and Hanson revisited the structure of the citizen ideology measure and proposed that it should be used as an indicator of state policy mood (Berry et al., 2007). These authors use interest group ratings from members of Congress and the distribution of votes

for candidates in congressional elections to suggest the ideology for the electorate in congressional districts (Berry et al., 2007). Then these scores are averaged across all districts to give an average state score. Berry et al (2007) assert the confusion and inconsistency is to be expected because the models use different “conceptions of ideological stability” (Berry et al, 2007, 113).

Citizen ideology scores use the liberal/conservative continuum to measure ideological identification within states. Berry et al (2007) claim state ideology is not stable over time while Brace et al (2004) claim that it is. Berry et al suggest that both might be right. Focus in the literature (Berry et al, 1998) has been on how state policy is affected by state public opinion. In this case, Berry et al (2007) suggest that ideology’s stability is not relevant if there is some variation between states and to ignore Brace et al (2004) when they recommend elimination of “state-level attitudes of ...national trends” before empirical analysis (Brace et al, 2004, 532).

Relying on Stimson (1991), Berry et al discuss two conceptions of an individual’s ideology: placement on the liberal-conservative continuum, known as “symbolic ideology” and the kinds of policies the person prefers again using the liberal-conservative scale, known as “operational ideology” (Berry et al, 2007; Stimson, 1991). Stimson’s measure of national mood (1991) is widely seen as the authoritative source for policy mood (Berry et al, 2007). Using these definitions, Berry et al assess the validity of state ideology measures as indicators of policy moods and find that the BRFH measure is in fact a valid indicator of state political ideology as it correlates highly with the Stimson measure

($r=.85$) when the GSS/ANES and CBS/NYT measures used in the Brace et al study did not.

Citizen ideology scores are based on the voting records of legislators who represent them. For a full explanation of how the measure is constructed see Berry, et al., 1998 pages 330-331. Put most simply, Berry, Ringquist, Fording, and Hanson see state government ideology as a measure of power. They operationalize this by using political party in control to create the variable. The assumption is that Democrats are liberal and Republicans are conservative (Hedge & Scicchitano, 1994). Using the political ideology literature as a guide, the parties' shares of seats in state legislatures (including party leadership in each chamber of the legislature) and governor's office are included to make the measure more robust (Berry et al, 1998). Berry et al. discuss a second perspective on citizen ideology which follows the prescription of "party elite ideology" conceived by Erikson, Wright, and McIver (1993). However, this measure ignores annual changes in government ideology, the role of governors in state policy making, and assumes that party power is correlated with the number of seats held in the chambers of the state legislature (Berry et al, 1998). The failures of the Erikson, Wright, and McIver model led to the creation of the BRFH measure.

The Brace et al measure is also inappropriate for my study because it is computed using data from state courts of last resort. As noted in Chapter Two, courts of last resort are typically more similar in design, function, and hierarchical structure than state trial courts. The difference at the trial level makes holistic study of state courts more difficult because of data collection issues and also because of differences in jurisdictional

characteristics. As a result, findings from the study published by Brace and his co-authors are less appropriately applied to a JPE diffusion study.

JPE programs are inherently state operated programs, independent of national influence such as policies on disaster found between the FEMA and state disaster preparedness programs. Nonetheless, JPE guidelines are promulgated by the American Bar Association as standards for judicial performance. If citizens in states become more conservative, then legislatures will follow public opinion by adopting more conservative policies regardless of what neighboring states do (Berry et al, 2007: 114). Or at least that is what the Berry et al (2007) study suggests.

H2d: States with greater degrees of fiscal health are more likely to adopt JPE.

State fiscal health has been measured in many ways and there is no consensus in the literature for which measure is the most reliable indicator of this concept. The challenge in specifying a JPE fiscal health measure arises in figuring out how to define financial health for a program that is removed from the direct connection to revenue and expenditures at the state level. That is, though every state judicial branch is funded through state budget allocations, some state court systems are not responsible for the administration or implementation of JPE programs and others are (e.g., in both Tennessee and New Mexico separate commissions handle JPE programs while in Kansas and Colorado the state provides both funding and administration for the process). To make

matters more complicated, state budget data are often difficult to decipher as terms and definitions are not standardized through all the states. Appropriately assigning all the costs associated with JPE in line item expenditures is nearly impossible with the way state budgets are written. It is also inappropriate to use only a JPE program budget because it does not measure the fiscal health of the state or even of the judicial branch alone. Finally, because I am considering when the programs are adopted there would be no budget for this program prior to its adoption anyway. Therefore, this measure is about total system fiscal health rather than isolated to JPE programs or the judicial branch specifically.

Nonetheless, state fiscal health matters and is relevant for whether an environment of innovativeness exists. Slack resources may allow a state to fund and support JPE programs; alternatively, fiscal weakness may make stakeholders less likely to consider adopting JPE programs. One study in particular suggested there is a relationship between economic parameters and the likelihood a state will undertake judicial reform. Flango (1975) hypothesized industrialized states would be more likely to “take the lead in initiating policy innovations simply because they could best afford them.” As the literature (Rogers, 2003) clearly notes, adoption and implementation are two distinct activities but there may be some correlation between financial stability and adoption nonetheless. Flango used a very crude measure as a proxy for financial health by employing “cost adjusted income per capita” as the ability of a state to pay for judicial reform in his analysis. He did not find a significant relationship between judicial innovation, state innovation score (defined by the Rogers 1969 study) and ability to pay (Flango, 1975).

However, other innovation studies have also used financial measures to establish likelihood of program adoption.

There is disagreement in the diffusion literature about the importance of financial condition as a predictor of adoption. Since the 1940s and 1950s when diffusion research existed as disconnected studies in a number of disciplines (Rogers, 2003), financial indicators have been associated with the models. In diffusion research, innovators typically have higher socioeconomic status than later adopters over time (Rogers, 2003). Several studies (Mohr, 1969; Daley & Garand, 2005) find slack resources are positively related to the decision to adopt an innovation. Early innovation in education studies by Paul Mort (1953; 1957) also considered fiscal indicators. Mort found the single best predictor of whether a school system would adopt an innovation was educational expenditure per student (1953). As in many other instances, it appears money matters.

However, other studies (Berry & Berry, 1990; 1994) found having a less robust financial position was positively related to the decision to adopt. Confusing the issue even more, other analyses (Brudney & Selden, 1995; Gianakis & McCue, 1997) found no relationship at all between these variables. Because there is some empirical support for including financial resources as a predictor of adoption, and because there is disagreement in the literature about the strength and direction of this relationship, I have chosen to include fiscal health in my model.

State fiscal health is a crude measure of the overall economic picture for the state. This variable may have inherent flaws given that governmental accounting rules changed

during the time period included for the analysis. GASB No. 34 radically changed the way governments report revenue and expenditures. Under the new rules, state and local governments use full accrual basis of accounting to deliver information about the status of government resources and operations. To make matters more complicated, not all states implemented the new rules at the same time. Scholars have only started to unravel the effects of GASB No. 34 as the data are just now available for analysis. Authors of an article published in the Summer 2007 issue of *Public Budgeting and Finance* tout themselves among the first to attempt to incorporate the new accounting rules into a study attempting to measure state fiscal health (Wang, Dennis, & Tu, 2007). The International City/County Management Association (ICMA) published a study in 2003 dealing with local government financial condition (ICMA, 2003). The benchmark for a strong financial condition is simply described as being able to adequately provide services to meet current as well as future obligations (Levine, 1978). Other definitions of financial condition proffered by ICMA include financial achievement measured by changes in net assets, fund equity, or net cash flows (Wang et al, 2007). Other researchers (Douglas & Gaddie, 2002; Hou, 2003; Wolkoff, 1987) use measures of financial crisis or fiscal stress as indicators of fiscal health.

Because the ability for an organization to meet its obligations in a timely manner is the most widely held measure for financial condition (Wang et al, 2007:3), this measure has been used in my study. That is, for each year from 1975 to 2006, I report the difference in total revenues and expenditures for each state. I also considered measures

such as per capita income, revenue per capita, and state bond ratings.

This is a crude measure and does not accurately capture the impact of state fiscal health on the judiciary specifically. Nonetheless, my assumption is that when a state generally has a negative financial position, individual departments will also suffer. Therefore, the judiciary should have little or no access to slack resources or financial health if the state as a whole has suffered financially. My hypothesis is that states with better financial positions will be more likely to adopt new programs including JPE.

H2e: States with higher degrees of legislative professionalization are more likely to adopt JPE.

I measure legislative professionalism using a measure developed by Peverill Squire in 1992 and followed the models in literature on the subject with one critical exception: Squire used the U.S. Congress as a baseline for comparison (Squire, 2007a: 212). Most researchers agree that the three components comprising legislative professionalization are salary and benefits, time demands, and staff or other resources available to legislators (Squire, 2007a: 213; Carey, Niemi, & Powell, 2000: 694; Thompson & Moncrief, 1992: 199).

The member salary measure is not simply defined and the current literature suggests that it should be refined. Specifically, to develop the updated member salary component Squire has considered two variables : salary from legislative service and

retirement or health care benefits (Squire, 2007a: 216). The latter is a newly added aspect of the professionalism measure with impacts on members' decisions to seek re-election. However, this refined measure has yet to be used in the literature (Squire, 2007a: 217) and, therefore, is not used in the present study. I use Squire's data (1992; 2007) to conceptualize this measure.

Time demands are calculations of actual legislative days members serve during a term. Conceivably, the total number of calendar days from opening to ending of a session could be counted but this gives an exaggerated perspective on how many days legislators are actually conducting the state's business. Therefore, Squire only uses legislative days in his index (Squire, 2007a: 217). A handful of states only report calendar days. To overcome this issue, Squire converts the number of days using a deflation ratio of five-sevenths to assume that the legislature meets five days a week while in session (Squire, 2007a: 217). He gets his data from the *Book of the States*. Special sessions are not included in the measure (Squire, 2007a: 218).

Staff resources are measured by Squire using statistics gathered by the National Conference on State Legislatures (NCSL). This group reported three sets of numbers for staff resources: permanent session staff, session-only staff, and total staff during the session (Squire, 2007a: 218). Squire uses the latter.

Why does this matter in an analysis concerned with policy-making in the judiciary? My hypothesis is that as legislative professionalization scores increase, a state is more likely to adopt comprehensive policies premised on innovative ideas. For legislators to

fully understand the intricacies and challenges facing the judiciary they need to analyze it over time. Squire's calculations give me a way to understand whether professionalized legislatures where members receive more compensation and staff support are likely to use this experience to undertake policy adoptions at a greater rate.

Legislative professionalization is a consideration of the capacity of policymakers to understand the inputs and issues affecting a state court system. The ability of the court to manage its resources including its administrative capacity is also an important consideration. Squire recently (February 2007) adapted his legislative professionalization measure to the courts. Using state courts of last resort, he considers the capacity of the courts to create and use information to make legal decisions. The variables he considered were judicial salaries, court control over docket management, and the number of law clerks employed by the justices (Squire, 2007a). Squire's measure is built on the work of other scholars of judicial administration.

Glick and Vine (1973) first measured court professionalization by looking at how closely state court systems modeled the ABA standard for model courts. Many of the studies considering professionalization of state courts have isolated the analysis to professionalism of state courts of last resort (e.g. Berkowitz & Clay, 2006; Brace & Hall, 2001; Caldeira, 1985; Harris, 1985). Brace and Hall (2001) used the Glick and Vine measure as a first step in conceptualizing their own measure of state court professionalization; however, they were interested in the professionalization of state supreme courts. Nonetheless, three factors were positively associated with

professionalization. The first and second factors, number of clerks for the chief justice and number of clerks for the associate justices, only apply to appellate courts in my dataset. The third, the difference between the judge salary and the mean court employee salary, could be applied to all state courts.

However, because I am interested in the state court system as a whole, the measure developed by Brace and Hall is not adequate for my analysis. One might think I would better served by using the Glick and Vine index for this study. Data for this variable come from documents compiled by the National Center for State Courts and are relevant to all levels of state courts. Glick and Vine used the model plans for judicial conduct and organization of state courts for their analysis.

I considered using measures of professionalization and one scoring innovativeness (Canon and Baum, 1985) in my models. However, because collecting the data for each type of court for each of the past thirty years is not feasible within the scope of this study, I was forced to use data from the published work of other authors. A dataset created for the journal *State Politics and Policy Quarterly* (Lindquist, 2007) includes court innovativeness, the Squire court professionalization measure, and the Glick and Vine measure. However, the measures were calculated for single years and held constant over time in this dataset. When included in the proportional hazard models none of these variables was significantly related to the change in survival times for the states and none was included in the final analysis.

Other/policies

Ad hoc variables are often included in diffusion models. This study follows that tradition by including type of judicial selection method and percentage of voter turnout as variables. Data for these variables come from the Book of the States. The innovation decision is usually made with consideration of how and when to consider uncertainty (Rogers, 2003). According to Rogers (2003), the “unknown” is one of many obstacles to innovation. The degree to which uncertainty matters is a function of the personal characteristics of the actor(s) making the adoption decision. In the context of JPE, elections often create uncertainty for judges and would be an obstacle to a state’s adoption of the program; therefore I use percent voter turnout.

H3a: States that use a merit selection process to fill judicial vacancies are more likely to adopt JPE.

H3b: States that use either gubernatorial or legislative appointment systems to fill judicial vacancies are less likely to adopt JPE.

H3c: States that use a non-partisan election process to fill judicial vacancies are less likely to adopt JPE.

H3d: States that use a partisan election process to fill judicial vacancies are less likely to adopt JPE.

As noted in Chapter Two, the way judges are selected differs across the states. Some states use partisan elections where judges are required to run political campaigns to win their seats on the bench. At the other end of the spectrum are the states that use a merit plan for judicial selection. Historically, judicial selection has been a reflection of state politics, tradition, and legal professionalism (Glick and Vines, 1973). Selection system design results from interactions between political parties, reform groups, state political elites, and professional organizations like the state bar associations and judicial conferences (Glick and Vine, 1973).

External characteristics influencing diffusion

Not surprisingly, geography scholars led the way in diffusion analysis with studies about the effect of place on adoption. To incorporate external influences in my models, I consider regional diffusion patterns and geographic proximity. Three variables are used to measure this concept. The first is a simple measure of the percentage of states that border other states that operate a JPE program for each year prior to adoption. The second measure is a calculation of the distance from the capital of the non-adopting state to the state capitals of bordering states with JPE programs for each year prior to adoption. The logic here is that state lawmakers act as peers and interactions between lawmakers in different states influences policy adoption. And finally, I consider whether the effect of associations and communication networks positively impact JPE adoption by looking at how many state representatives participate in national associations and conference meetings devoted to state legislative activity and court administration.

H4a: States bordered by a higher percentage of other states with JPE programs are more likely to adopt JPE.

Modern diffusion studies are rooted in models stemming from the early sociological tradition. These scholars usually considered how an innovation traveled over a geographic area (such as a state) as an attempt to understand sociological change (Rogers, 2003). I calculated percentage of bordering states by calculating the percentage of states with JPE programs for each state and each year of the study.

Hypothesis 4b: States with capital cities located geographically closer to other state capital cities where JPE has been adopted previously are more likely to adopt JPE.

Although early diffusion literature has either ignored or disregarded the effects political actors play on diffusion processes, state policy diffusion research has begun to incorporate variables that measure political forces (Mintrom, 2000; Haider-Markel, 2001; Grossback, Crotty, & Peterson, 2004). Factors such as geographic proximity are still considered but are now evaluated alongside agenda setting theories (Walker, 1981; Kingdon, 1995), policy content (Hays, 1996; Mossberger, 2000), presence of national or professional associations and meetings (Clark & Little, 2002; Rich, 2004), overlapping media markets (Karch, 2007), target constituencies, leadership practices (Lutz, 1987;

Menzel & Feller, 1977; Mintrom, 1997; Mintrom & Vergari, 1998; Mintrom, 2000), and social learning (Mooney, 2001). The earliest diffusion studies keyed on geographic proximity as a significant explication of diffusion but more recently Volden (2006) found that emulation is likely when a successful program exists regardless of the geographic concentration of other programs.

To evaluate Volden's notion in the context of JPE, I hypothesize the physical distance to another state capital city where JPE has been adopted is a more significant predictor of subsequent adoptions than simply being bordered by a higher percentage of other JPE states. The latter is a crude representation of Rogers' idea that geography is important but it ignores more modern realities like the effect of regional media markets and shared cultural norms. My assertion is that as media markets, citizen political ideology, and cultural norms overlap, the behavior of state legislators becomes more similar. So, the variable of interest changes from whether states share borders with other JPE states – which could mean that capital cities are very far apart (e.g., Colorado and Arizona) – to how many miles separate political actors.

CHAPTER V: Research Design and Methodology

Chapter Five describes the research design and data collection procedures used in this study. A discussion of data screening, reliability, validity, and variable operationalization is also included here. The chapter concludes with an overview of the statistical techniques employed in this research.

Research Design

Research design is the most important component of an empirical study. The design should reflect the purpose the research serves and be written in language familiar to the intended audience (Simon, 1969). My research design is quasi-experimental since instituting appropriate physical controls is impossible when American states are the unit of analysis. The effects of randomization and sampling are not relevant to this study as I am dealing with a full population. However, statistical significance is reported where appropriate

Data Collection

I use secondary data in my research. Relatively few comprehensive state level datasets exist. As a result, the data are aggregated from a range of sources including *Book of the States* (1976-2006), the Bureau of Justice Statistics, the National Association of State Budget Officers, the National Center for State Courts, U.S. Census, Uniform Crime Reports, and a state partisanship dataset compiled by Carl Klarner for a *State*

Politics and Policy Quarterly manuscript (Klarner, 2007). Variables included in the study are based on literature previously reviewed and are theory driven.

Data Screening

Data accuracy was checked using screening techniques including examination of the frequency distribution for each variable. The purpose of a frequency distribution is to simplify inspection of the data so the researcher can more easily organize and work with it. The frequency distributions were generally within normal ranges. However, some variables are heavily skewed (see Table 6, page 157-158) .

In addition to considering whether the data were skewed, I also looked at kurtosis values to learn more about the shape of the data. A kurtosis value indicates how peaked the distribution of the data is. A platykurtotic distribution has too many cases in the tail of the distribution and appears more flat than a leptokurtotic distribution that has few cases in the tail allowing the curve to be peaked in the center.¹ Generally, the shapes of the variable distributions are acceptable.

During the second phase of the data screening process a missing values analysis (MVA) was conducted. Analyzing data for missing values is critical for time series analysis because missing data can bias results and lead to distorted conclusions (Garson, 2008). The MVA was conducted with Intercooled Stata version 9 using the “tabmiss” command to count the number of missing values in both numeric and string variables. No variable has missing data points.

Finally, the data were screened for multicollinearity. Bivariate correlations for all independent variables allow researchers to determine if two variables are overly related to one another. Correlations (r) above the threshold of 0.7 are too high meaning that one of the variables in the pair should be excluded from the final model (Tabachnick & Fidell, 2001). Variables that correlated most highly were state annual revenues and annual general expenditures for each state ($r = 0.99$) indicating these data capture virtually identical information. Based on this result a new variable, “statenet”, was created by subtracting annual general revenues from annual general expenditures. Only “statenet” is included in the regression models. It is reported as a measure of fiscal health in the results chapter.

Two groups of variables that are theoretically related have correlations approaching the threshold for multicollinearity: judicial selection and the Erikson, Wright, McIver citizen ideology variables. The selection and retention variables tend to have higher correlations with one another than other variables in the dataset. These variables are included in the models as dummy variables for each type of selection system. However no correlation between variables in this group exceeded 0.6. The Erikson, Wright, McIver citizen ideology variable and the Erikson, Wright, McIver elite ideology measure correlate somewhat highly ($r = 0.63$). Since this is comfortably below the multicollinearity threshold there is no reason to exclude the EWM variables from the analysis. In addition, there is a theoretical reason to explain the level of correlation between these variables since the measures are constructed with some of the same

components. Accordingly, the newly generated financial measure (statenet) and all other independent variables are included in both bivariate and multivariate statistical analyses.²

Validity

Unlike researchers working in the life sciences, social scientists can rarely use a ruler or graduated cylinder to measure a concept. For example, measuring political ideology is not as easy or direct as measuring temperature, weight, or volume. Therefore, social scientists have to take great care to construct concepts that quantify what they think they are measuring.

A valid social science study assesses what it is purported to and is free from errors of logic. More formally, Cook and Campbell (1979) define it as the "best available approximation to the truth or falsity of a given inference, proposition or conclusion."

By checking for both internal and external risks embedded in construct design, research methodology, interpretation, and other threats to meaningful investigation researchers can ensure validity of study results.

Internal validity

Internal validity asks whether causal relationships exist. There are four types of internal validity: face, content, concurrent, and criterion. When assessing if a study meets the conditions for internal validity, the researcher assures the inferences made from the analysis are close to the truth; that is, consumers of the research can be confident the cause and effect relationships are as reported.

Ensuring a measure logically represents the intended concept should be among the first consideration for internal validity checks. In other words, the intent is to ascertain whether reasonable people with differing viewpoints would arrive at similar conclusions about the plausibility of connections between results and the trait in question. If so, the measure is said to have content or face validity. This is the least formal type of validity and the easiest to satisfy. I assessed face validity by conducting interviews with JPE program staff members in several states asking what sorts of variables contributed to the process of adoption in their state (see Appendix D for notes from these conversations). In addition, I discussed my variables and hypotheses with other JPE stakeholders including attorneys, judges, and voters. Face validity with respect to legislative adoption is assured by using constructs found in previous studies (for example, the BRFH measure and the Squire index) or validated by external organizations like the U.S. Census bureau.

A more sophisticated measure of validity is content validity. Though related to face validity, content validity uses experts to establish if the nuances of a measure allow the researcher to measure what he or she really wants to. To consider whether the variables included in my study have content validity I rely on measures used in existing literature. Most of the characteristics included in my study satisfy only face and content validity.

However, when possible, I consider whether the measures have construct validity. This type of validity is more rigorous than the others discussed. Statistical analyses

aimed at testing validity, such as correlating my measures to results from existing literature, will be discussed in the following results sections.

I am unable to test predictive validity at this point because there is no way to assess whether my models accurately forecast real world scenarios only happening in the future. This is something to focus on in future research analyzing JPE adoptions and implementation.

Threats to Internal Validity

Threats to internal validity mainly occur in three ways. Obstacles to research design include historical influences, maturation, and selection effects. Researchers must carefully address and minimize the impact of these threats to analytical studies.

Historical events can confound results. States in my study are not subjected to any particular sort of “treatment” and so historical events have no impact on the likelihood of adoption. There are few, if any, external events that could induce all fifty states to adopt a program of court reform that measures judicial performance. A more likely scenario where historical events affect study validity would be in state adoption of anti-terrorism laws or hate crime legislation. For example, Matthew Shepard was murdered in Wyoming in 1998 because of his sexual orientation. After his death hate crime legislation passed in several states (e.g., Hawaii (2003), Connecticut (2004), Colorado (2005), and Maryland (2005) so that gender and sexual orientation hate crime laws now exist across the country (Taylor, 2007). These policy adoptions could confound a diffusion study if it were in an issue area related to sexual orientation policies.

This sort of issue is not a problem with the adoption of JPE programs because there are no externalities affecting judicial performance measurement (or the demand for it) with national interest.

Maturation is a second issue of external validity. Essentially, maturation threats happen because events unfold naturally with the passage of time. For example, study participants may age or die so that their failure to adopt an innovation is not at all related to policy rejection but rather to expected causes. Therefore, it is difficult to link a characteristic to an outcome in some situations because untangling the effect of time from the causal mechanism can be difficult or impossible. For example, juvenile justice programs often report recidivism rates as a way to measure successful intervention with youthful offenders. The juvenile offenders stop committing delinquent acts as they grow older. This may happen as a result of aging rather than as a part of the successful intervention of the program.

Legislative adoptions of JPE programs occur over time and my study is susceptible to this kind of temporal threat to validity. While there is no overt maturation threat because a learned behavior influences the outcome, states could adopt JPE programs simply because they are emulating other states. I can not administer a pre-test/post-test to create comparison groups that would minimize this threat to validity. This remains a limitation of my research as well as a limitation of all diffusion studies using American states as the unit of analysis.

Selection bias presents a third major threat to validity. Program participants may

choose to join a study because they are most amenable to the treatment or would benefit most from its application. This is a major issue in research on new drugs or medical treatments. The difficulty is detecting whether the treatment makes a difference to individuals with a pro-treatment bias relative to those who do not. However, this is not a factor in my study.

The variables included in this study are at greater risk for threats to construct validity. One way to create problems with constructs is to inadequately define measures. I avoid this by relying on definitions from previous literature and from experts in the fields of diffusion, legislative policy, and JPE. Only once (other policies) do I use a single measure to study a concept in the diffusion model. There are multiple measures for motivation, resources/obstacles, and external factors that contribute to diffusion. By using multiple variables for these constructs I avoid mono-operation bias.

Other types of validity threats (e.g., mortality, instrumentation issues, learning effects) do not apply because of the research design and unit of analysis used in my study. However, when one chooses a Cox Proportional Hazard approach the proportional hazard assumption must be considered. Box-Steffensmeir and Jones (2004) suggest three tests for non-proportional hazards: 1) piecewise regression, 2) residual analysis; 3) explicit tests of interactions of covariates and time. I tested the proportional hazard assumption by looking at the interaction of the covariates and time. This is preferred to the other tests, especially piecewise regression, when one is using a non-parametric model (Box-Steffensmeir & Jones, 2004). Residual analysis is accomplished by plotting Schoenfeld residuals against survival time. Nonlinearity implies that the proportional

hazard assumption has been violated. These analyses suggest that my model does not violate the proportional hazard assumption.

External validity

External validity relates to whether the findings can be generalized to other individuals, organizations, states, jurisdictions, or other types of populations. If there is a unique relationship between the sampled population and a condition or characteristic related only to that group then the generalizability of the findings are questionable.

External validity is assured when the research considers the universe of issues that can muddle the relationships and outcomes being studied. A thoroughly considered research design is the best way to ensure external validity.

Reliability

The reliability of data used to measure diffusion patterns of JPE programs is critical for generalizability of findings. The analysis of the 20 states with JPE programs must be generalizable beyond this subgroup to predict accurately the likelihood the 30 states yet to adopt JPE will do so in the future. If measures for various characteristics included are reliable then the conclusions from the study can be both trusted and expected to be repeated by subsequent studies. However, because the underlying distribution of my data is unknown I estimate my regressions using Cox proportional hazard models. This decision will be discussed in much more detail later; however, I mention my methodological choice now because it impacts my ability to use this analysis as a

predictive tool. Results from Cox regressions can not be used as predictive devices to extrapolate beyond the last observed failure (Box-Steffensmeir and Jones, 2004). These models are simply able to predict the change in hazard rate for individual cases and thus, the amount of time that an individual might “survive”, or in other words, when to expect failure to occur. The model can not extend into the “follow-up” period of the data where an out of sample prediction would result (Box-Steffensmeir and Jones, 2004).

States as a Unit of Analysis

Following the policy diffusion literature, my research uses event history analysis to model the probability a state will adopt a JPE program in a given year. According to Berry and Berry (in Sabatier, 1999: 187-88), a diffusion model takes the general form shown in Equation 1 (see page 106). In this equation the American state is the unit of analysis.

States are eligible to adopt a policy in a particular year with i representing the probability of adoption and t representing time for each variable. Motivation factors are likely to influence adoption positively. Variables such as the character of public opinion and electoral competition are a part of motivation. Resources/obstacles indicate variables that present challenges to innovation. Other policies are usually operationalized as a set of dummy variables influencing whether the state will adopt the new policies. Finally, “external” is a representation of factors present in other states that have adopted the policy in the past.

Rogers suggested that longitudinal panel studies are one way to include the effect of time in diffusion research and to make the analysis "...‘moving pictures’ of behavior, rather than ‘snapshots...’ (Rogers, 2003: 127)." One shot surveys are incapable of providing clues to causality or in depicting the order of factors like wealth, size, cosmopolitanness (Rogers, 2003: 128).

Though the population for this data set is limited to the 50 states, there is an observation for each state for each year included in the analysis. States are not seen as cases; instead, "state years" (Berry & Berry, 1990) incorporates time into the measure and these are the cases. In the event history analysis (EHA) model there are 1,550 possible observations. Because states drop out of the risk set when a JPE program is adopted, fewer observations are used in the EHA model.

Overview of Event History Analysis

The job of the social science researcher is to explain the process of change, learn about the causal relationships, and assess the importance of each to the event being studied over the span of a specific course of time (Box-Steffensmeir & Jones, 2004). The distribution of these data determines model design. A brief discussion of the types of study designs follows.

Cross-sectional data must be handled carefully in models with categorical dependent variables (Coleman, 1981). The status of the "state" is at issue; over time, states may change and this has implications for how the probability of an event is interpreted or studied (Coleman, 1981; Blossfeld, Golsch, and Rohwer, 2007). The unit

of analysis can change over time but the state process can not; therefore, using logit or log-linear analysis with process oriented dependent variables is inappropriate (Coleman, 1981).

A cross-sectional sample is a “snapshot.” Cross-sectional data are found at one single point in time even though the timeframe being analyzed might be a period of days, weeks, or years. Consider Figure 7. The datum depicted is only capable of providing information at t_2 and in no other space. This limits the ability of a researcher to draw conclusions about events happening over time.

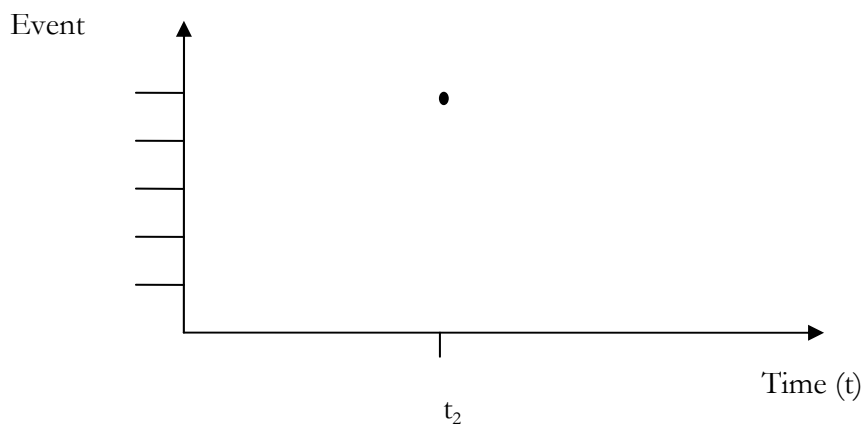


Figure 7. Cross-sectional sample

Source: Blossfeld, Golsch, and Rower (2007).

An example clearly explaining this issue is provided by Blossfeld, Golsch, and Rohwer (2007). People with higher levels of education typically have a lower probability of experiencing poverty (measured in many studies by the need for social assistance

funding). However, educational attainment is not necessarily linked to getting out of poverty if someone is already poor. The net effect is unequal. Results of a logistic regression could be ambiguous or misleading in situations such as this (Blossfeld, Golsch, and Rohwer, 2007).

Panel data (See Figure 8) are gathered by repeatedly sampling the same cases over different periods of time. These data are not continuous. However, panel data more robustly portray a process than a single cross-sectional study. Panel data show events at points in time determined by the researcher but the data between points of interest are lost. Losing information between observations could lead to attenuation and inappropriately drawn conclusions.

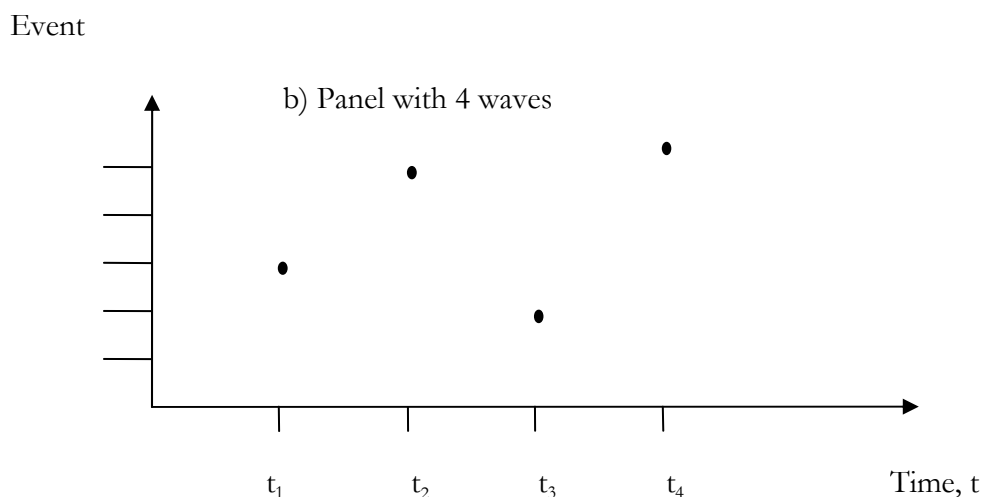


Figure 8. Panel sample

Source: Blossfeld, Golsch, and Rohwer (2007).

Panel data are often critiqued because response bias, sample attrition, non-response and missing data, or issues with centering (Blossfeld, Golsch, and Rohwer, 2007) create problems. Because the same subjects are studied over and over they can develop sensitivity to the process of observation, evaluation, or questioning leading them to respond differently than on the first round of observation. This issue is comparable to the Hawthorne effect frequently cited in management or developmental behavior panel studies.

In addition, much social science research is based on phenomena beyond a researcher's control. For example, while a researcher could assign an individual to a specific group that eats only vanilla ice cream or a control group that eats no ice cream, the researcher can not assign a particular state to adopt a policy (e.g. JPE) while forcing other states not to adopt the policy. The implication is that the researcher is unsure about how to design sampling waves. The phenomenon, (e.g. policy adoption) in question may happen sporadically and the sampling frame may not pick up the nuances of the event.

Processes are not static and therefore, continuous data are the best way to analyze causal mechanisms contributing to event occurrence. For that reason, event history data are appropriate for studying changes over time (see Figure 9) (Box-Steffensmeir & Jones, 2004).

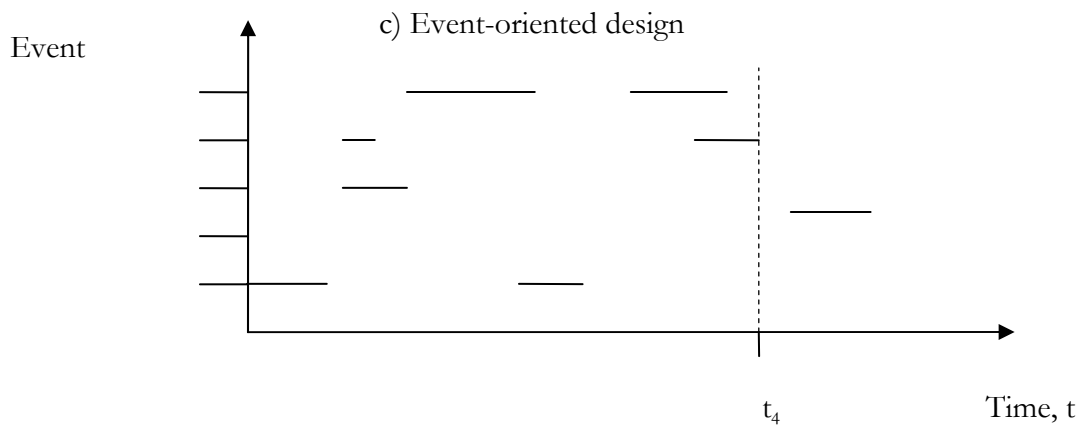


Figure 9. Event history sample

Source: Blossfeld, Golsch, and Rohwer (2007).

The most important benefit of event history data is the completeness of the observations. The data are collected retrospectively generally including the entire life of the individuals included in the study (Blossfeld, Golsch, and Rohwer, 2007). Unlike panel data, which can be costly to collect, event data is cheap and easier to attain. Event history studies are also benefited by data that are easier to fit to a framework of codes and meanings (Dex, 1991).

Social science is consumed by understanding events and their causes (Allison, 1984). Researchers consider crime, student test scores, personnel decisions (hiring, promotion, and retention), population changes, results from elections, and a myriad of other subjects. Each of these examples is an event defined as “...some qualitative change that occurs at a specific point in time (Allison, 1984: 9).”

Change must be distinctive so the period before the event and the time afterward are easily identifiable. Because changes happen over time, historical evidence of the evolution should be factored into models incorporating causes and effects (Allison, 1984). Event history analysis (EHA) is a tool that allows these considerations to be included.

Traditional regression models including logit and probit analyses are not as powerful as EHA. Regression models fail to incorporate changes in covariates over time and have limited ability to estimate risk and event occurrence. Ordinary least squares (OLS) regression is substantially limited in its ability to handle time variant covariates (TVC) and this provides a solid reason for considering more sophisticated methodologies. EHA is one tool that can incorporate the fluctuations of variables over temporal periods.

EHA is also more useful than logit or probit models because neither of those methods allows both the occurrence of an event and the non-occurrence of an event to be included in the model simultaneously (Box-Steffensmeir & Jones, 2004). Logit and probit models would fail to handle censored cases and lead to selection bias. Duration modeling overcomes the obvious problems implicit in linear approaches including minimizing the effects of censoring.

For more than twenty years, social scientists have used EHA because of the recognition that viewing processes over time yields a more substantive analysis (Blossfeld, Golsch, & Rohwer, 2007; Box-Steffensmeir and Jones, 2004). Event history models address both whether an event occurred *and* when it happened. Thus, we have

more information about the characteristics making the environment more favorable for that particular event.

EHA models are known by an assortment of names including duration models, survival models, failure-time models, reliability models, and hazard rate models (Box-Steffensmeir & Jones, 2004). Each name signifies that the underlying purpose of the models is to estimate and analyze survival after the occurrence of an event. Duration models commonly include information about how long (time) a unit spends in a baseline state before experiencing an event, when observations enter and exit the process, and use covariates to make inferences (Box-Steffensmeir & Jones, 2004).

Social scientists frequently attempt to explain the causes of survival and to postulate implications after the fact (Box-Steffensmeir & Jones, 2004). Survival implies that not surviving is also a possibility. Therefore, the concept of “risk” is an important part of event history analysis. In the context of this study, the states survive until JPE is adopted and are continually at risk of adopting the program until they make a conscious decision to adopt or not; in EHA terms, they “survive or expire.”

Though a variety of statistical approaches, with differing features and underlying distributions are available for event history data, there are some similarities between them. The dependent variable measures the duration of time that the units of analysis spend in a state before some event occurs. Researchers are usually able to record the start time (when the history begins) and when, or even if, the process ends. Units are therefore classified as “at risk” until the event happens. Usually event history models are

concerned with the relationship between the dependent variable and the independent covariates as time progresses. Models are created to develop the researcher's understanding of the influence of the covariates on the duration and ultimate occurrence (or non-occurrence) of the event.

The different event history analyses are premised on the shape of the underlying data distributions. In fact, very different findings result when specific modeling choices are made by the researcher. To illustrate this idea, the results from several different JPE adoption models are featured in Table 6.³

Table 6. Log-Likelihood and Akaike Information Criterion for a JPE Adoption Model

Model	df	-2LL (null)	AIC
Logit	6	-675.54	1361.08
Probit	6	-675.47	1360.94
Exponential	6	-633.58	1277.16
Weibull	6	-341.26	694.53
Gompertz	6	-320.73	653.46
Log-normal	6	-393.03	798.06
Log-logistic	5	-355.72	723.43

Source: Author's calculations.

The Akaike Information Criterion (AIC) is often used to assess model fit where lower values indicate a more parsimonious model. According to this standard, the model in Table 5 using a Gompertz model would be the best methodological decision. However, because there are a substantial number of observations without resolution, the underlying distribution is unknown. The results are not trustworthy. That is, with 30

states yet to adopt JPE programs observations found in the future are unrecorded.

Therefore, a semi-parametric solution, like a Cox proportional hazard model, is preferred.

The dependent variable, policy adoption, is an assessment of the risk for each state each year. If policy adoption were analyzed using only multiple linear regression, the model would fail to show effects over time and the likelihood of attenuation would increase. Ordinary least squares regression models fail when applied to event analysis because decisions dichotomizing the dependent variable may be arbitrary and waste information (Allison, 1984). EHA is a way to overcome this issue and assess policy adoption over time.

Other reasons for using EHA for longitudinal data analysis were summarized by James Coleman (in Blossfeld, Golsch, & Rohwer, 2007: 1): “1) there is a collection of units (which may be individuals, organizations, societies, or whatever), each moving among a finite (usually small) number of states; 2) these changes (events) may occur at any point in time (i.e. they are not restricted to pre-determined points in time; and 3) there are time-constant and/or time-dependent factors influencing the events.” Longitudinal studies also overcome problems associated with missing data more easily than cross-sectional or panel study designs because the bias from missing data is reduced and the means for estimating interpolations are more reliable.

Event history analysis is a modified type of panel study. Data can be collected longitudinally and at any point during the time period under study (see Figure 9). This design offers the most complete picture of possible changes for the event being analyzed. A richer understanding of the processes involved is realized by considering social science

problems, including policy adoption, over time. Figure 10 shows a typical diffusion graph. This graph demonstrates the logistic shape associated with diffusion.

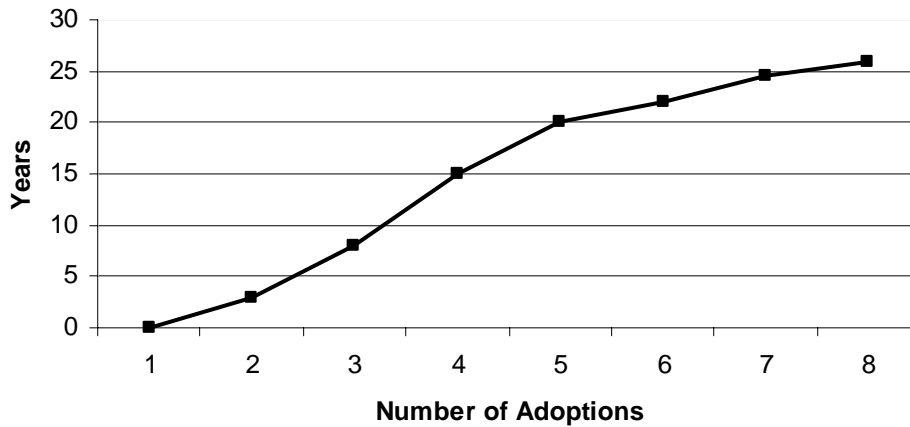


Figure 10. Typical Diffusion Graph

Source: Author's calculations.

Events can be compared based on survivability and also inferences can be made using differences across cases (Box-Steffensmeir & Jones, 2004).

For JPE adoptions this means that an event history analysis offers the ability to assess the probability that states will adopt the policy and also to look at characteristics within each state, across time, to see what combination of variables (for example selection system and court professionalism) affect the perception of risk (or policy adoption). Box-Steffensmeir and Jones (2004) assert the reasonableness of claiming EHA models are comparative.

Determining when risk “begins” is controversial in EHA. Event history models are most frequently used for medical or manufacturing studies where the likelihood of seeing the beginning of something is much higher. For example, noting a person’s birth as the start of his life cycle is easier than figuring out when policy adoption actually starts. The norm for diffusion studies comparing states is to use the first year of the first adoption as the beginning of risk. Whereas policy adoption is a single, non-repeatable event for the pioneer state, the second and subsequent phases of adoption represent the spread of the innovation across the total population of remaining states. That is until a first adoption occurs, other states can not be at risk for adopting the program; that is, risk for other states commences after the first program is approved.

Conception of the Model and Data Distribution

The basic analytical framework for an event history analysis includes a “state space” and a time axis (Blossfeld, Golsch, & Rohwer, 2007: 38). In the context of JPE, the state space is the condition of adopting the policy and the time axis is divided into years. Theory drives these decisions. Neither federal nor local governments can compel state judiciaries to engage in any policy or practice. Judicial performance evaluation programs are aimed at rating individual judges in an effort to preserve judicial independence and assure accountability. However, disaggregate judicial systems in the United States operate independently and because one state adopts a JPE program the others are not compelled to do the same. As such, it is appropriate to use states at the unit

of analysis to study judicial performance evaluation programs and these are the state space as described by Blossfeld, Golsch, & Rohwer (2007).

Policy adoption is a process and not a static event. Time is treated as a continuous variable in duration models even though researchers are forced to measure it using discrete units, for example years, months, or days. Extant literature acknowledges that variables change at specific points in time. Nonetheless, a continuous model can be assumed for the purpose of mathematical modeling and, in the process the dispute over whether discrete units such as years are actually continuous can be disregarded (Blossfeld, Golsch, & Rohwer, 2007: 27).

The time axis used to study the diffusion of JPE programs is calendar years because states adopt policies during legislative sessions. However, the legislative sessions operate differently with some beginning a fiscal year in July, others in October, and still others in January. To simplify and provide a common start time for all states, January 1, 1976 is the beginning of this study. Any policy enacted during a legislative year will not go into effect until the following session. However, my study is not about implementation. The focus here is only on adoption. In that regard, only the actual date of JPE adoption matter, not which legislative session it occurs in. For that reason using a calendar year beginning on January 1 and ending on December 31 is a reasonable choice for the unit of time used in this study.

In event history analysis, causation can only be implied by considering the past, present, and future. A research design must incorporate these three points in time for

each observation, noting values of the independent and dependent variables at each point (Blossfeld, Golsch, & Rohwer: 30). For example, to understand whether a state has adopted a policy at year 12 of the study we need to know whether the policy existed in that state during year 11. The effect must follow the cause in time. Given this reality, the presence of the independent variable must be the cause of the change in status of the dependent variable.

In my study, states can adopt JPE policies at any given time but the change will only present with the beginning of a new year. The state space (the American state, in this case) is discrete and the resulting changes are discrete as well (Blossfeld, Golsch, and Rohwer, 2007: 31). The change from the original state to the ending state is defined as the transition rate (T) and is expressed as:

Equation 2. Change of Event State

$$Pr(t \leq T \leq t' \mid T \geq t) \quad t < t'$$

The probability of event occurrence happens in the interval between the beginning (t) and ending time (t') ranging from 0 to t . Nonetheless, as time approaches zero, the likelihood of event occurrence decreases until it becomes a mathematical impossibility. At this point, it makes sense to convert the equation into a ratio to represent future changes per unit of time (Blossfeld, Golsch, & Rohwer, 2007: 32). This transition rate is the hazard rate meaning that it represents the rate at which a state fails to preserve the status quo, changing from at risk for policy adoption to actually adopting the policy. The resulting

propensity for change is a functional relationship between the covariates in the model and time. Events can be conditioned on what happened in the past but can not be affected by what happens in the future.

The adoption of a JPE program can be conceived as a restricted event history analysis model having a single episode and two states (Blossfeld, Golsch, & Rohwer, 2007: 38). Each state enters the risk set represented by the original state which is the condition of not having a JPE program. The final, or destination, state is adoption of a JPE program. More than 30 years after the first JPE program was implemented, no state has reverted to having no program or rescinding the legislation authorizing JPE. Therefore, the a priori assumption for this study is that reverting to the original state is impossible. Given that assumption, a single episode model is appropriate.

When a distribution is known the data are parametric. Inferences can be made about the way these data will behave. Parametric statistical tools include analysis of variance, paired t-tests, and likelihood ratio tests. These are considered robust for statistical hypothesis testing. However, non-parametric data are frequently found in social science research. These are data of lesser quality, typically from small samples, and where the underlying distribution is unknown. A non-parametric population can not be fit to any parametric distribution and the normal assumptions of regression (including logit or probit) can not be satisfied. Typically, non-parametric tests have less power than parametric tests but non-parametric tools are more flexible and allow investigation into data that would be otherwise biased and not reliably interpretable.

Any event history runs the risk of including censored data. Data that are incomplete before the start time (t_0) is left censored. Data that are incomplete at destination state are right censored. And, some cases can be censored bilaterally. Left censoring is a complicated problem that introduces sample selection bias and error into models (Blossfeld, Golsch, & Rohwer, 2007: 40). Data that are left-truncated leave the researcher without the ability to estimate the length of time a case has been exposed to the conditions leading to status change. Right-censoring presents a different, less troublesome, problem. Right truncated data are typically life cycle or panel studies where cases have not experienced event occurrence at the conclusion of the timeframe for the study (Blossfeld, Golsch, & Rohwer, 2007: 41). The JPE study included data that are right-censored. However, controlling for time corrects this censorship issue.

Single episode data are assumed to be independent (Blossfeld, Golsch, & Rohwer, 2007: 49). The dependent variable is coded “0” when no policy exists and “1” after a state has adopted JPE. There is no difference in how a state adopts the policy, whether the legislation proceeds through committee, wins on a floor vote, comes after a prolonged period of interest group pressure, or if it happens early in a calendar year versus later. The transition can only be defined as a single change from the origin (no policy) to the designation state (has a policy).

The study begins at time equal to zero and the ending time is 30 years hence. The state space is represented by $Y = \{0,1\}$: $0 \equiv$ having no JPE program, $1 \equiv$ having a JPE program. Following the literature, and to avoid having durations equal to zero, one year

is added to the policy duration variable (Blossfeld, Golsch, & Rohwer, 2007: 49). My risk set begins with 1976, the year following adoption by Alaska (actual adoption occurred in 1975). For year 1, there are 49 states in the risk set. The annual number of “state years” is stagnant until the second adoption in Connecticut in 1984. From that point, the risk set contains 48 state years until the third adoption in Utah in 1986. Each time a state adopts JPE, it falls out of the risk set and is no longer considered in the analysis.

EHA and Cox Proportional Hazard (CPH) Models

EHA is a type of analysis that both subsumes other models and is a methodological tool on its own. One variation of EHA models is known as the Cox Proportional Hazard model (CPH). CPH is a member of the proportional hazards family but is different than other models of its class because the proportional hazard rate is unknown and therefore unspecified (Steffensmeir & Jones, 2004). Duration times are ordered and parametrized in terms of the covariates but the distributional form of the duration times is left unspecified (Jones, 2005).

The CPH assumes that the effects of the covariates can only create proportional shifts in the transition rate, or dependent variable (Blossfeld, Golsch, & Rohwer, 2007). A proportional hazard model begins with the with baseline hazard function and is shown in Equation 3. where $h_i(t)$ is the hazard at the time of the i^{th} individual and $h_0(t)$ is the baseline hazard at time t .

Equation 3. Baseline Hazard Function

$$h_i(t) = e^{X_i\beta} h_0(t)$$

X_i is the collection of component values ordered by magnitude and direction (a vector) that covary while β is a vector of coefficients resulting from fitting the model after its estimation. In the most basic form of the equation, $X_i = 0$, no covariates are included in the analysis (Mason, 2005).

To make the equation constant, so the only variation is individual risk at a point in time, both sides are divided by the baseline hazard rate so each case is proportional to the hazard function. This allows comparison of the individual hazard rate $h_i(t)$ to the baseline hazard function $h_0(t)$. Each individual ($e^{X_i\beta}$) is held constant across time because the individual hazard function is roughly parallel to the baseline hazard function (see Equation 4) (Mason, 2005).

Equation 4. Individual Hazard Function

$$\frac{h_i(t)}{h_0(t)} = e^{X_i\beta}$$

To understand the overall model the baseline hazard function must be known (Mason, 2005).

Social science research should be focused on getting relationships between variables specified correctly rather than on choosing the specific form of duration dependency (Box-Steffensmeir & Jones, 2004). Though the form of the distribution of the hazard model matters, the relationships are of greater import. Cox is the preferred

alternative for nonparametric conditions because it leaves the distributional form of duration times unspecified while continuing to allow the baseline hazard and baseline survivor function to remain available for calculation and interpretation (Box-Steffensmeir & Jones, 2004).

The reason that CPH models are preferred to EHA models is that CPH are non-parametric. Because 30 states have yet to adopt JPE programs the entire distribution of the data is not known. A less stringent model (CPH) allows investigation of the diffusion of JPE over time despite a lack of a priori reasons for why or when the remaining states will adopt the programs. In the absence of a theoretical explanation for diffusion of JPE, I need the more flexible approach to model duration data that CPH models allow.

Chapter Five Notes

¹ Variables in my dataset with substantial kurtosis issues include population, the Squire index, the Erikson, Wright, McIver citizen ideology measure, the Erikson, Wright, McIver elite ideology measure, percentage of bordering states with JPE programs, and all the state revenue and expenditure variables. Using a Cox proportional hazards model will allow me more flexibility in including these variables in the model. Because interpretation of a transformed variable becomes almost nonsensical in this kind of model, I only include transformed variables when absolutely necessary.

² All correlations are reported in Appendix E: Statistical Results.

³ The results found in Table 15 do not contain all the independent variables featured in the final models used for hypothesis testing.

CHAPTER VI: RESULTS & CONCLUSIONS

Political factors combine with socio-demographic and environmental characteristics to lead to the likelihood that state policy adoption occurs. This chapter describes the variables and relationships between policy actors and their environment with an eye toward what characteristics make it more likely that a JPE program will be adopted during a particular year. Before results of the regression models are presented at the close of the chapter, descriptive statistics and correlations are discussed to highlight the character and quality of the data used in this analysis.

Adoption of JPE (Dependent Variable)

Adoption of an official JPE programs can take two paths: 1) programs are sanctioned by state law (statutory or constitutional) or 2) established by order of the state high court. These states are depicted in Figure 11. Interestingly, Massachusetts adopted JPE using both available channels for different types of courts. This is the only state to use a dual-adoption method. Although several states have other types of “unofficial” JPE programs operated by non-institutional bodies like state bar associations or interest groups such as local newspapers or the League of Women Voters, these types of JPE states are not considered in my models.

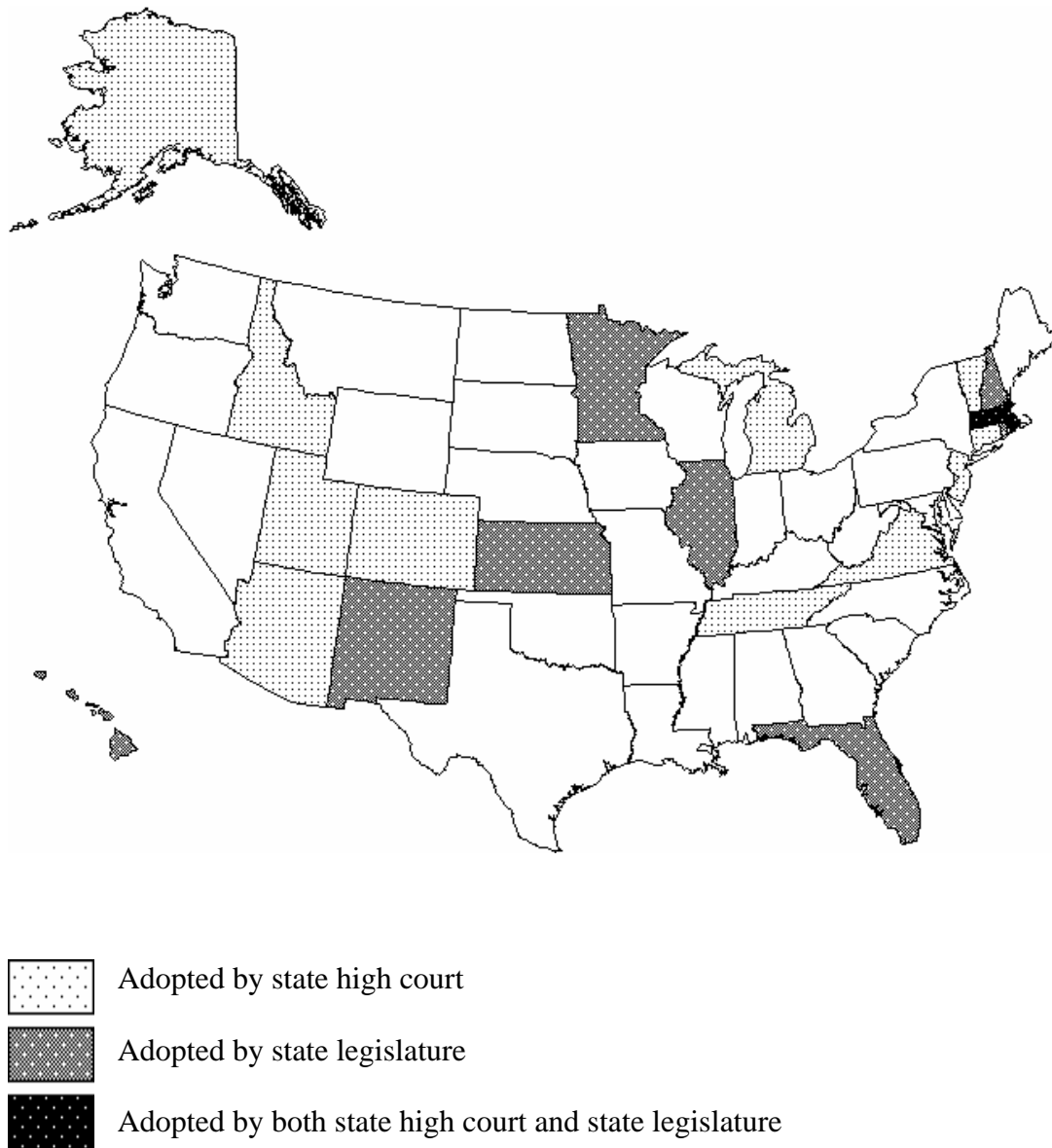


Figure 11. Adoption Mechanisms

Source: Author

Table 7 provides detailed information about the states highlighted in Figure 11 and identifies the ruling, law, or constitutional amendment for JPE programs in the 20

states that now have them. This information provides the reference for how the dependent variable is distributed over time.

Table 7. Official Adoption Mechanisms for State JPE Programs

Constitutional Amendment	Statutory Law	Order of High Court
AZ (Art. 6, §42), 1992	AK (Adm. Rule 23(b)), 1976	FL (S.C.R. 2.051(c)(4)), 1998
	CO (C.R.S. §13-5.5-101), 1988	HI (S.C.R. 19.1), 1993
	CT (C.G.S. §2-40A), 1984	IL (S.C.R. 58), 1998
	ID (S.C. §1-2205), 2000	MA (SJC Rule 1:16), 1989
	KS (K.S.A. 20-3203 – 3205)	MN (Chief Council of Judges Rule), 2001
	MA (M.G.L. 211§26), 1989	NH (SCR Rule), 1987
	TN (TC Ann. §17-4-201), 1994	NJ (SCR 1:35A-2), 1988
	UT (78A-12-203), 1986	NM (SCR 28-101), 1997
	VT (15 §608(b)), 1979	RI (S.C Art. 6, Rule 4), 1993
	VA (Code §17.1-100), 2005	

Sources: See citations within Table 7.

Factors affecting the timing of adoption decisions may have differed for constitutional amendments, legislative statutes, and rules of the court. Though it would be interesting to analyze each path separately, the small number of each type of adoption makes it difficult to maintain multiple categories. For that reason, all types of institutional adoptions have been collapsed into one indicating the presence or absence of JPE in the state.¹

Descriptive Statistics and Correlations of Explanatory Variables

Presentation of the empirical results begins with examining descriptive statistics.

Figure 12 shows the progression of JPE programs over time. Because adoptions occurred over 30 years and the pace of adoption is somewhat slow in the first decade of JPE, each figure represents five years. In each frame, the states highlighted in the lighter shade are adopting JPE during the time period shown whereas darker states already have JPE.

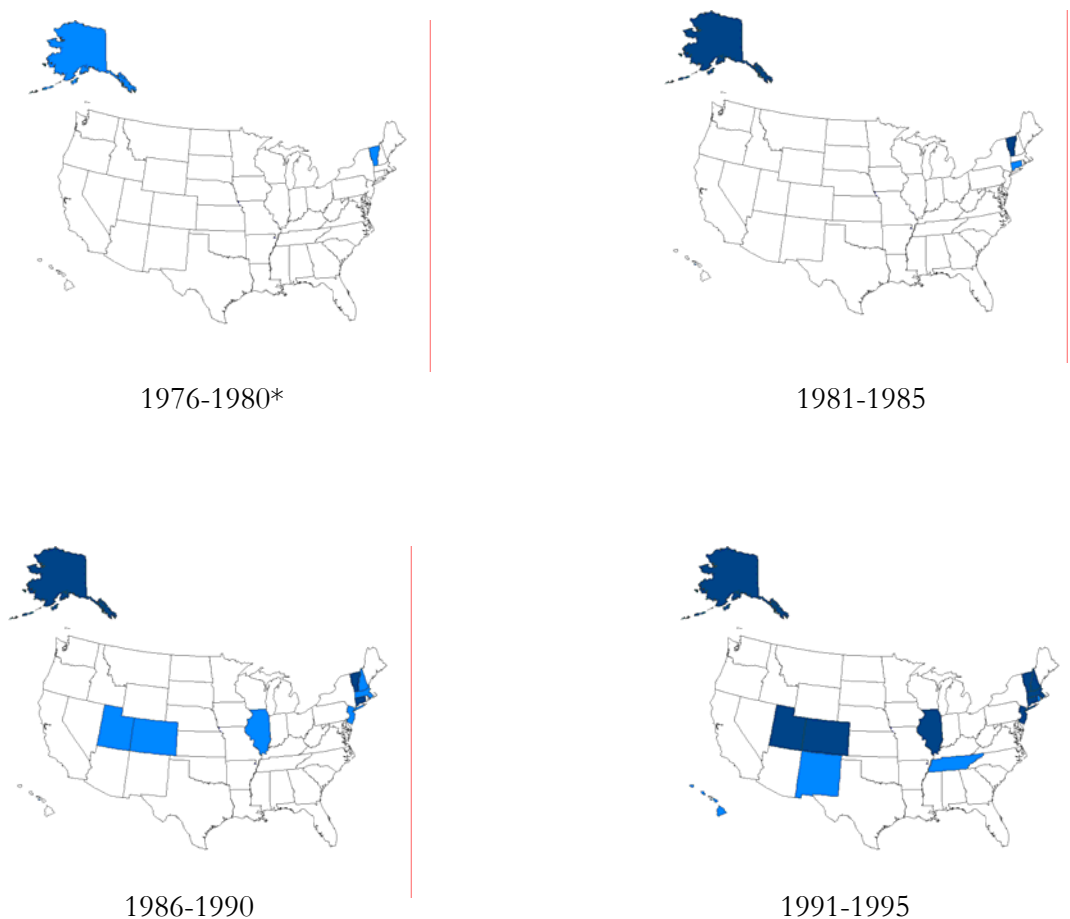


Figure 12: Chronological Adoption of JPE Programs

Note: Figure 12 continues on the following page.

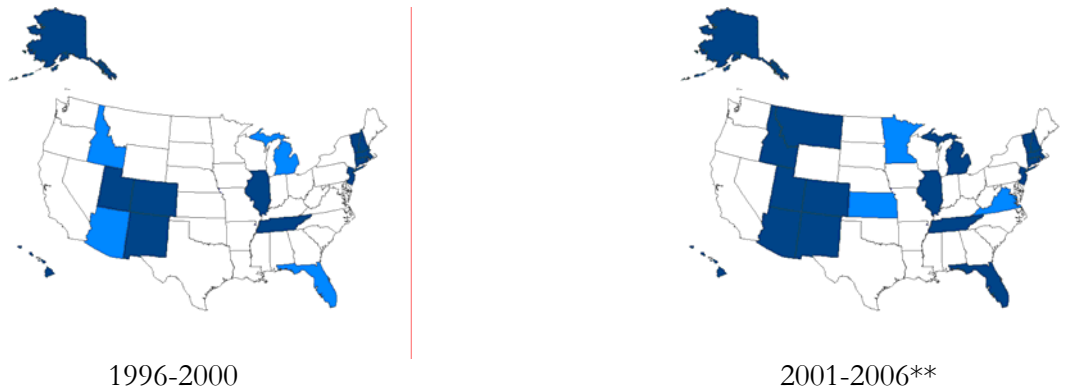


Figure 12 Continued

Source: U.S. Bureau of Justice (2004); National Center for State Courts (2007); various state statutes and Supreme Court rules

* 1975 is not included because no JPE program existed in that year

**2006 is included in the 2001-2005 category for this figure

The cumulative frequency distribution suggests that JPE adoptions follow a s-shaped curve (see Figure 6, Chapter IV) as seen in other diffusion studies (e.g., Berry & Berry, 1990). Because 30 states have yet to make decisions on whether JPE is an appropriate way to evaluate state courts and the judges who staff them, the final distribution of diffusion of JPE can not be certain but thus far the data seem to conform to what political science, public administration, and other social science studies have discovered about institutional state policy adoption.

Policy diffusion is typically explained as a social learning process through which political leaders take cues from neighboring states (e.g., Berry & Berry, 1990; Mooney & Lee, 1995; Walker, 1969; Wong & Langevin, 2006). However, close inspection of the maps in Figure 12 suggests that geographic proximity may be a complex variable. For example, Vermont, on the completely opposite side of the United States from original

adopter Alaska, was the second state to adopt a JPE program and even though Vermont and Connecticut are both in the northeast region of the country, these are non-contiguous states. However, the region variable is most often operationalized as percentage of bordering states. I choose to look at distance differently by considering miles between state capitals in those states in which programs exist.

Examining univariate and bivariate statistics yields clues on how to proceed in model specification. For example, looking at the frequency counts of variables allows the researcher to learn whether potential indicators are normally distributed. Table 8 shows the frequency distribution of several variables indicate issues with over or under-representation of observations in the tails of the distributions.

Table 8. Frequency Distributions of Interval Variables

Variable	Mean	Standard Deviation	Min	Max	Skew	Kurtosis
Violent crime rate	454.62	233.74	47.00	1244.30	.62	2.92
Property crime rate	4239.45	1164.00	1619.60	7996.00	.41	2.98
Legislative Professionalism	.20	.12	.03	.66	1.67	6.20
BRFH Citizen Ideology	47.47	15.36	8.45	95.97	.27	2.80
BRFH Elite Ideology	49.43	23.51	.00	97.92	-.06	2.11

Note: Table 8 continued on next page.

Table 8. Continued

Variable	Mean	Standard Deviation	Min	Max	Skew	Kurtosis
EWM Citizen Ideology	145921.00	148354.20	13368.53	1523958.00	6.82	49.84
EWM Elite Ideology	7.43	3.299152	.00	28.00	.90	4.81
Bordering states with JPE	.18	1.71	.00	67.00	38.42	1500.43
Miles between JPE states	2080.06	1546.44	.00	4203.00	-.14	1.30
Fiscal Health	-2404.18	54593.13	-956344.1	600000.00	-11.00	209.07

Source: Author's calculations.
N = 1,550

Specifically, state population, the Erikson, Wright, and McIver citizen ideology variable, percent bordering states, and fiscal health have skewed distributions. When skewness is between ± 2.0 the data may be considered approximately normally distributed. A positive skew indicates that there are outliers in the tail pulling the distribution to the right. When kurtosis statistics are ± 2.0 the distribution has approximately a normal distribution. However, when too few cases are represented in the margins of the distribution the data become peaked (leptokurtosis); if too many cases (platykurtosis) are in the margins, the data become flat.

There are kurtosis issues in several of my variables with the most significant occurring with the percentage of bordering states and fiscal health. These data are very asymmetric. Transformations could be calculated (for example, using absolute value or

forcing a Gaussian distribution) but these corrections would be undesirable. The transformed data would be nearly impossible to interpret in hazard models and are therefore not calculated.

In some diffusion studies geographic covariates are ordered according to regions assigned by the U.S. Bureau of the Census. Because some of the covariates used in this study include regional characteristics, and these studies rely on Census Bureau data, I use the same to identify regional categories as shown in Table 9. States are generally equally distributed among the categories with the exception of those in the Southeast. There are 24 percent of American states in this region compared to an average of 11 percent in all other regions.

Table 9. Geographic Regions of the United States

Region	States	Percentage
Far West	AK, CA, HI, NV, OR, WA	12
Great Lakes	IL, IN, MI, OH, WI	10
Mideast	DE, MO, NJ, NY, PA	10
New England	CT, ME, MA, NH, RI, VT	12
Plains	IA, KS, MN, MO, NE, ND, SD	14
Rocky Mountain	CO, ID, MT, UT, WY	10
Southeast	AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, VA, WV	24
Southwest	AZ, NM, OK, TX	8

Source: U.S. Census Bureau, 2004.

On first glance geography seems to play a role in which states have JPE programs and those that have yet to adopt (see Table 10).

Table 10. Percentage of JPE Programs by Geographic Region (1976 to 2006)

Region	Has JPE (%)	Does not have JPE (%)	Total (%)
New England	28	9	12
Mideast	7	11	10
Great Lakes	10	10	10
Plains	3	16	14
Southeast	8	27	24
Southwest	9	8	8
Rocky Mountain	17	8	8
Far West	18	11	12
Total	17	83	100

Source: Author's calculations.

N = 1,550; calculations all years for all states are included as separate observations

Most programs are located in the northeast region of the United States.

Interestingly, this is also where most states use legislative or gubernatorial appointment to select judges who are then on the bench for lifetime tenure (e.g., Rhode Island or Massachusetts) or who gain retention through a merit-based reappointment process (see Figures 2, 3, and 4 for reference). The underrepresented regions are the West and South (with the exception of Florida, which is often an exception in the South), and the upper Midwest.

Again, these states share commonalities in the type of selection system used to seat judges. In the southeast, judges are generally “hired” (at both the trial and appellate level) through some form of popular election or retention vote. In the southeast there are

few merit-based judicial selection and retention states. This trend suggests that the presence or absence of JPE may be correlated with the style of judicial selection in place. That is, there is a possibility that the potential political risk of publicizing and participating in a judicial evaluation program is simply too great for judges in an election state.

However, further exploration and multivariate analysis of this covariate suggests that region plays a minor role, if any, in adoption decisions. It is possible the effect of geography is shrinking over time as virtual methods of information sharing such as electronic mail and video conferencing become standard practice. Most diffusion models incorporate a geographic variable, such as percent bordering states with the program of interest, into the calculations. Following the literature, I also included this variable but added a new measure, miles from the state capital to the closest state capital with a JPE program (“capmiles”), as a way to consider whether it is borders or actual proximity that matters .

The relationship between the regional variable and JPE is extremely weak and negative indicating that the impact region plays could have a dampening impact on adoption of JPE programs, if any impact at all. The strongest relationship is actually between JPE adoption and miles between state capitals ($r = -0.11$). Like the regional variable, this negative association seems to indicate that when distance between a state capital and JPE programs is greater the likelihood of adopting this policy decreases. Though the association between bordering states and JPE adoption is weak at best, the

sign of correlation coefficient supports previous studies that show increasing the percentage of neighbor states that have adopted a policy increases the likelihood that other states will follow. Because the association between the region variable and program adoption variable is negligibly low, region was not included in the multivariate analysis. However, the other geographic measures (capmiles and border) were examined further.

My findings differ from other studies for two main reasons. The first is that I use a much longer time frame than many diffusion studies giving me an opportunity to see changes in policy diffusion over three decades, rather than through only a few years. This broad longitudinal perspective gives me a more comprehensive picture of diffusion. In addition, my findings suggest that regional proximity does not have the explanatory power found in other diffusion models. The effect of being closer to other states with the programs lessens over time indicating that something happens, or perhaps fails to happen, in more recent years. This difference might be best explained by studying how virtual networking and electronic communication has changed the way that governmental actors, including those in state legislatures, seek and use information.

Survival estimates

Limitations in data and analytical techniques make this an exploratory rather than confirmatory study. However, some results suggest that relationships in this model should be considered in future research. These ideas will be explored throughout the remainder of the discussion.

Though the descriptive summaries provide a simple introduction to the policy diffusion of JPE programs, the hazard rate is a more robust examination for longitudinal study of policy adoption. A life table allows the period of observation to be divided into smaller time units. For example, in the case of JPE adoptions, time can be subdivided into single calendar years treated as discrete units rather than as a total continuum from 1976 to 2006. For each interval (year) the number of cases surviving without a JPE program can be used to calculate the probability that a terminal event (i.e., JPE policy adoption) will occur during that time period. The probabilities from each interval are then used to calculate an overall estimate of the probability that the event will occur at other points in time.

Table 11 shows the hazard probabilities and cumulative hazard proportions of states eligible to adopt a JPE program over the thirty years from 1976 to 2006. The first four columns show a history of the policies from Alaska in 1976 to Kansas and Virginia in 2006. The cumulative proportion of adoptions (column 5) is the cumulative number of cases surviving to a discrete point in time. The probabilities are assumed to be independent across time so that the probabilities are calculated by multiplying the probabilities of survival across all previous intervals. The cumulative proportion of adoptions increases to 40 percent in 2006 when 20 states had adopted JPE programs.

Table 11. Hazard Rates and Cumulative Proportion of States Adopting JPE, 1976-2006

Year	States Adopting JPE	Number Adopting in Year t	Cumulative Number of Adoptions	Cumulative Proportion of Adoptions = A_t^a	Risk Set	Hazard Rate = h_i^b
1976	AK	1	1	0.02	50	0.02
1977	--	0	1	0.02	49	0.00
1978	--	0	1	0.02	49	0.00
1979	VT	1	2	0.04	48	0.02
1980	--	0	2	0.04	48	0.00
1981	--	0	2	0.04	48	0.00
1982	--	0	2	0.04	48	0.00
1983	--	0	2	0.04	48	0.00
1984	CT	1	3	0.06	47	0.02
1985	--	0	3	0.06	47	0.00
1986	UT	1	4	0.08	46	0.02
1987	NH	1	5	0.10	45	0.02
1988	CO, IL, NJ	3	8	0.16	42	0.07
1989	MA	1	9	0.18	41	0.02
1990	--	0	9	0.18	41	0.00
1991	--	0	9	0.18	41	0.00
1992	AZ	1	10	0.20	40	0.03
1993	HI, RI	2	12	0.24	38	0.05
1994	TN	1	13	0.26	37	0.03
1995	--	0	13	0.26	37	0.00
1996	MI	1	14	0.28	36	0.03
1997	NM	1	15	0.30	35	0.03
1998	FL	1	16	0.32	34	0.03
1999	--	0	16	0.32	34	0.00
2000	ID	1	17	0.34	33	0.03
2001	MN	1	18	0.36	32	0.03
2002	--	0	18	0.36	32	0.00
2003	--	0	18	0.36	32	0.00
2004	--	0	18	0.36	32	0.00
2005	--	0	18	0.36	32	0.00
2006	KS, VA	2	20	0.40	30	0.07

Sources: Book of the States, data collected by author, table design Wong & Langevin, 2006

^a A_t = cumulative number of adoptions in year t divided by 50

^b h_i = number adopting in year t divided by the number of states in the risk set

The hazard rate (Table 11, Column 6) improves our ability to understand policy adoption by factoring in the sequencing of JPE adoptions using discrete points in time (Singer & Willet, 2003; Wong & Langevin, 2006). The hazard rate estimates the probability per unit of time of that case surviving during the current interval will fail in the next interval. In my model, the hazard function is the conditional probability that a state will adopt a JPE program in a calendar year given that the state has not previously adopted a JPE policy. Risk is shown by the magnitude of the hazard at each discrete interval ranging from zero to one where higher values correspond to a greater risk for policy diffusion. However, these are not cumulative and do not consider temporal effects. Multivariate analysis, including event history analysis, will allow this.

The overall goal of EHA is to produce an estimation of the amount of risk each observation in a risk set has for failure during the next time period. That is, for any given year the question becomes “what is the likelihood that any state without a JPE program will adopt one in the next year?” The hazard rate produced during the analysis is relative to each observation but not specific to individual observations. For example, during a random year like 2002 the hazard rate associated with Maine is the same as that for Georgia and all other states. There is no way to know whether Maine is at greater risk for adopting JPE compared to other states. Sometimes, though, simultaneous adoptions occur so that the model must attempt to order events without enough information about sequencing to do so accurately.

Close inspection of Table 11 shows the simultaneous adoption of JPE programs in

three years (1988, 1993, and 2006). These concurrent adoptions are known as “ties” and represent multiple failures at single points in time. When events occur during the same time period the EHA model has trouble predicting hazard rates and an alternative method of approximation is necessary to assure statistically valid results. Information about these multiple failures is presented in Table 12.

Table 12. Simultaneous JPE Adoptions

Year	States Adopting JPE	Number of Ties	Cumulative Percentage of Ties
1988	CO, IL, VT	3	0.15
1993	HI, RI	2	0.25
2006	KS, VA	2	0.35

Source: Author’s calculation.

Note: Simultaneous adoptions occurred only in these three years. There are no other ties in the data set.

Failure ties present a problem with prediction of the hazard rate because the model can not incorporate information about which case failed first. Since failure determines the size of the risk set and the size of the risk set affects calculation of the hazard rate, ties in the data set pose a major problem to the validity of the model. According to the literature developed around this problem (e.g., Box-Steffensmeir & Jones, 2004), there are as many as four solutions for multiple failures.. The most straightforward and commonly employed is known as the Breslow method.

When the number of simultaneously occurring events exceeds five percent estimates may be significantly biased (Prentice & Farewell, 1986: 14). My risk set includes seven ties (35 percent) over the thirty years of JPE adoptions included in this study. The basic assumption of the Breslow method is that no event occurs before another at a particular point in time.

A different way to conceptualize the Breslow method is to suggest that simultaneous failures occur all are treated as if happening at the same moment in time, with no order. Under this assumption the size of the risk set is the same regardless of whether one state adopted before another during a particular year (or unit of time). Temporal order for adopters does not matter. Therefore, the Breslow method is a partial likelihood method because only some of the available data are used; the likelihood function is a “partial likelihood function” (Box-Steffensmeir & Jones, 2004).

A hazard model using the Breslow method assumes that the space between successive duration times (or failure times) does not contribute to understanding the relationship between covariates and the hazard rate (Box-Steffensmeir & Jones, 2004). Readers may recall from earlier discussions of the design of the Cox Proportional Hazard Model that no baseline hazard function is specified using this approach. Therefore, this semi-parametric analysis provides no information about the intervals between failure times.

The resulting model treats simultaneous failures as “ordered failure times” that contribute no information to the likelihood function. This is important because the model

uses this information to sort data according to ordered failure times and then uses this to examine the number of cases that fail at time, t_i . Using the Breslow approach is appropriate when the number of ties is small at any given point in time (Box-Steffensmeir & Jones, 2004). In the case of JPE adoptions, no more than three ties occur during any given year. Using the Breslow approximation to relax modeling assumptions is appropriate.

Figure 13 shows the hazard probabilities of state JPE adoption as a longitudinal series of cross-sectional observations connected by line segments. This graphic was introduced by Miller (1981) and Lee (1992) to show years with highest risk of policy diffusion along with the overall shape of the hazard function over time (Singer & Willet, 2003; Wong & Langevin, 2006). The graph in Figure 13 shows the risk of JPE adoption was slight or at best moderate in the first ten years after Alaska adopted.

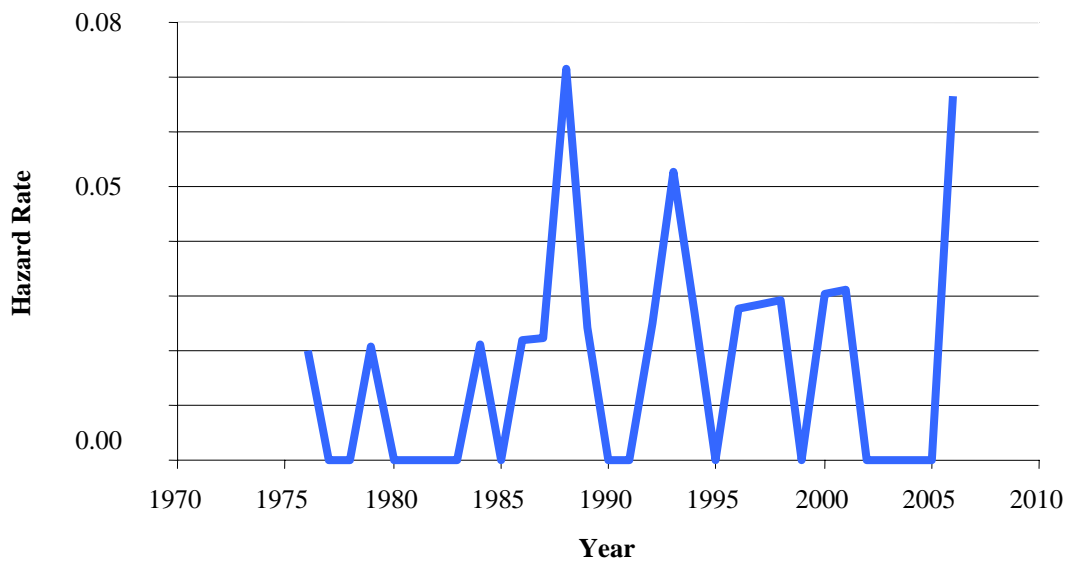


Figure 13. Hazard Probability for State Policy Adoption

Source (for graph design): Wong & Langevin, 2006; Author's calculations.

Rogers (2003) suggests that after 20 to 30 percent of eligible units have adopted the program the rate of diffusion increases over time. In 1988 when Colorado, Illinois, and New Jersey adopted the hazard rate increased sharply and then declined until 1993 when an erratic pattern developed and persisted through 2006. JPE programs were present in 20 percent of states in 1992 and by 1997 30 percent had adopted the program. The pattern of peaks and troughs shown in Figure 13 indicates that state adoption of JPE programs is not a completely random sequence of events independent of time.

Another way to approach survival analysis is to consider the Kaplan-Meier Product Limit method. As seen in Figure 13, the likelihood of states continuing without a JPE program decreases over time. The rate of adoption is slow in the beginning but increases as time passes until there are fewer cases left in the risk set and the rate of adoption begins to slow until it stops completely (see Figure 14). The result is a decreasing survival function suggesting that JPE adoption follows a pattern similar to those seen in other models of policy adoption (e.g, Mintrom, 1997; 2000).

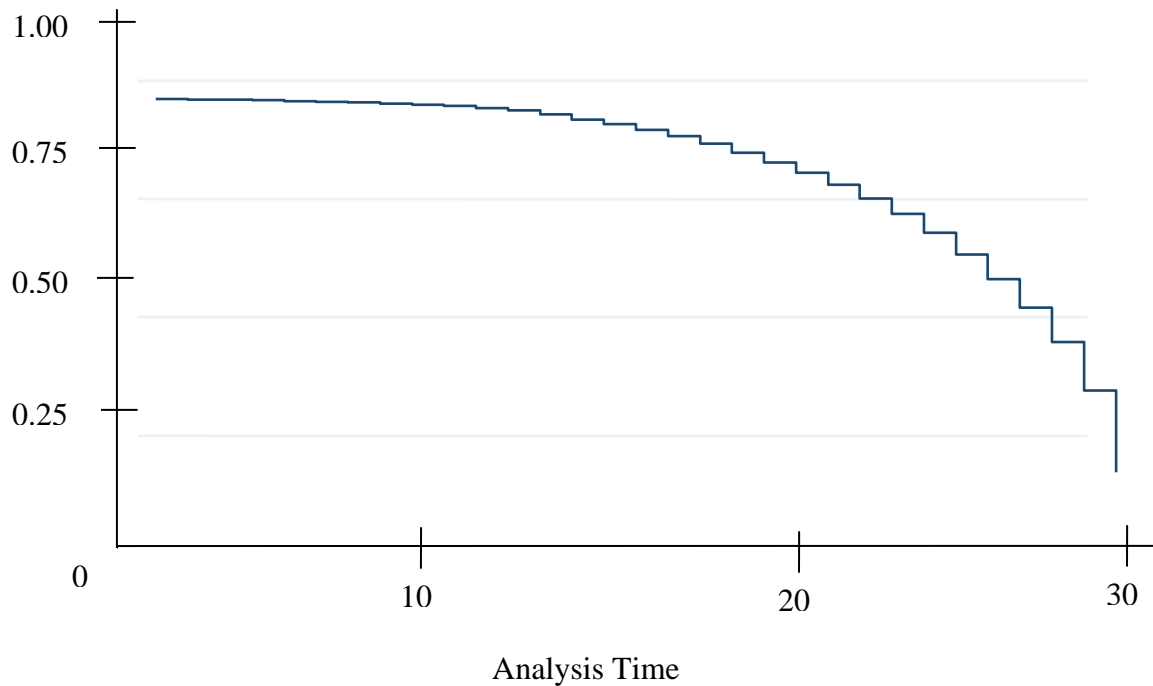


Figure 14. Kaplan-Meier Survival Estimate

Source: Author's calculation.

Hypothesis Testing for the Cox Proportional Hazard (CPH) Models

Though the life table approach and Kaplan Meier estimate provide some useful information, neither allows the effect of covariates on the dependent variable to be examined. Cox regression handles censored cases while also incorporating the time to adoption in the model. A CPH model assumes that the hazard rate of its subject is proportional to the baseline hazard rate. Predictions for event change (failure) are related to triggering event(s). All covariates in my model were treated as time invariant. This multivariate approach is modeled using the equation first shown in Chapter V and here for reference:

$ADOPT_{i,t} = f(MOTIVATION_{i,b}, RESOURCES/OBSTACLES_{i,b}, OTHER\ POLICIES_{i,b}, EXTERNAL_{i,t})$ where

Motivation = Violent crime rate, property crime rate, political party in charge

Resources/Obstacles = BRFH citizen ideology, BRFH elite ideology, EWM party identification, EWM elite ideology, fiscal health, legislative professionalism

Other policies = Type of judicial selection system (8 dummy variables for type)

External = Distance from capital to nearest JPE program

I report results from six different models driven by a combination of theory and support from extant literature. The final results that I report throughout the remainder of the discussion are referencing Model One unless otherwise noted. All models are significant but goodness of fit statistics suggest that Model One has the best specification design.

Model Fit

A Wald statistic, based on likelihood estimation for each coefficient, is the chi squared measure used to check for proper identification of event occurrence and non-occurrence. The Wald statistic is a robust indicator of proper model specification. The X^2 tests reported in Table 13 suggest the null model can be rejected. When the Wald statistic is significant ($p < .05$), at least one coefficient in the model is significantly different from zero offering insight into the change in likelihood of JPE adoption.

Table 13. Wald Chi-Square

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Wald X^2	464.46	470.18	430.09	429.78	448.11	430.42
(df)	(20)	(19)	(17)	(16)	(17)	(16)
Number of observations	1500	1500	1500	1500	1500	1500
Number of failures	296	296	296	296	296	296

Source: Author's calculation.

Note: All models significant at the $p < 0.01$ level.

Model performance is examined further by comparing log pseudolikelihoods ($-2LL$), Akaike Information Criterion (AIC) and Bayesian Information Criterion (BIC). Because robust standard errors are reported, log pseudolikelihood is used as an indicator of model fit. The $-2LL$ is a measure of the approximate distribution of the data and values of this test should decrease with proper model specification. Both the AIC and BIC are statistical tests of model goodness of fit and can be used as guides for model selection. The AIC imposes a penalty when parameters are added and the BIC penalizes additional parameters even more harshly than AIC; thus, parsimony is rewarded. The model with the smallest AIC or BIC is the better fitting model.

As seen in Table 14, adding covariates improves the fit of the model over a null-only model. The implication is that these variables contribute to a better understanding of the characteristics leading to JPE policy adoption. Models 3 and 4 are poor fits and the best fits are found in Models 1, 2, 5, and 6.

Table 14. Model Fit Statistics

	Null	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
$-2LL$	-1749.39	-1542.39	-1546.65	-1563.80	-1564.15	-1548.81	-1548.81
AIC	3498.77	3125.26	3125.29	3161.61	3160.10	3131.62	3129.62
BIC	3498.77	3231.52	3226.24	3251.93	3245.11	3221.94	3214.63

Source: Author's calculations.

The fit between the models is similar though each has limited explanatory power. The difference is the exclusion of the voter participation variable and in whether the Berry, Ringquist, Fording, and Hanson and Erikson, Wright, McIver ideology variables as well as the bordering state variable are included. Because the fit statistics between these three models is so similar the most parsimonious final model is not the one reported. Instead, I report a more fully specified model (Model One).

The results of the hazard models are shown in Table 15. Models Two through Six include different combinations of the ideology variables and the geography variables. I made the choice to consider the separate effects of ideology and geography because these are identified as important in internal determinants models of state policy adoption (e.g., Berry & Berry, 1992). However, when these covariates are separated the goodness of fit does not improve dramatically. Therefore, I report the most fully specified model.

In Model One, I hypothesize that voter participation may have an effect on the likelihood of JPE adoption. The political science and economics literature (Dhillon & Peralta, 2002; Lassen, 2005) suggests that higher levels of voter participation may be related to the availability of candidate information. Because voters are tasked with making judicial retention decisions in Missouri plan states, higher levels of voter participation may be realized when JPE results are published giving voters more information about judicial candidates. However, though significant at the exploratory level ($p < .10$), the voter participation variable has only a slight, inconsequential effect on the change of likelihood to adopt JPE.

Hazard ratios are reported with robust standard errors. Robust standard errors are reported to account for clustering caused by temporal dependence. This more stringent approach results in larger standard errors than models run using the “non-robust” method. The differences may be small but important enough to change the interpretation that can be drawn (Box-Steffensmeir & Jones, 2004). All statistical significance tests are two-tailed.

Table 15. Proportional Hazard Models for State JPE Adoptions, 1976-2006

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Variable	B (Rob. SE)	B (Rob. SE)	B (Rob. SE)	B (Rob. SE)	B (Rob. SE)	B (Rob. SE)
Voter participation	.004* (.004)	--	--	--	--	--
Violent crime rate	.999 (.000)	.999 (.000)	.999 (.000)	8.000 (.000)	.999 (.000)	.999 (.000)
Property crime rate	1.000*** (.000)	1.000*** (.000)	1.000*** (.000)	1.000*** (.000)	1.000 (.000)	1.000*** (.000)
BRFH citizen ideology	1.000 (.007)	1.000 (.007)	--	--	.998 (.159)	.998 (.007)
BRFH elite ideology	.982*** (.004)	.982*** (.004)	--	--	.983*** (.000)	.983*** (.003)
EWM party identification	.999*** (6.63e-07)	.999*** (6.81e-07)	.999*** (.000)	.999*** (6.63e-07)	--	--
EWM elite ideology	1.027 (.018)	1.027 (.018)	1.037* (.018)	1.036 (.018)	--	--
Bordering states with JPE	1.000 (.004)	.999 (.005)	1.013** (.004)	--	.998 (.004)	--
Miles between JPE states	1.000*** (.000)	1.000*** (.000)	1.000*** (.000)	1.000*** (.000)	1.000*** (.000)	1.000*** (.000)
Political party in charge	1.081 (.161)	1.097 (.164)	1.131 (.166)	1.138 (.166)	1.084*** (.159)	1.083 (.158)
Fiscal Health	.999*** (.000)	.999*** (.000)	.999*** (.000)	.999*** (.000)	.999*** (.000)	.999*** (.000)

Table 15. Continued

Legislative professionalism	17.033*** (9.420)	17.602*** (9.729)	11.559*** (5.897)	11.183*** (5.680)	18.563*** (10.637)	18.616*** (10.660)
Appellate judicial selection: merit	3.326*** (.831)	3.441*** (.817)	3.654*** (.729)	3.652*** (.727)	3.347*** (.809)	3.348*** (.809)
Trial judicial selection: merit	.094*** (.030)	.089*** (.028)	7.000 (.035)	.145*** (.034)	.091*** (.028)	.091*** (.028)
Appellate judicial selection: appointment	7.576** (6.095)	7.616** (6.133)	7.426*** (5.519)	7.451*** (5.531)	6.591** (5.482)	6.589** (5.482)
Trial judicial selection: appointment	5.153*** (1.506)	5.196*** (1.525)	2.506*** (.667)	2.509*** (.668)	5.547*** (1.594)	5.541*** (1.582)
Appellate judicial selection: non-partisan	26.884*** (24.767)	27.948*** (25.616)	26.232*** (22.061)	26.099*** (21.920)	24.521*** (23.124)	24.538*** (23.130)
Trial judicial selection: non-partisan	.083*** (.035)	.08*** (.032)	.067*** (.026)	.068*** (.026)	.084*** (.034)	.084*** (.034)
Appellate judicial selection: partisan	.521* (.197)	.503* (.186)	.317*** (.105)	.316*** (.105)	8.892** (8.355)	8.892** (8.354)
Trial judicial selection: partisan	8.219** (7.604)	8.512** (7.863)	8.898** (7.470)	8.901*** (7.464)	.436* (.163)	.436** (.163)

Source: Author's calculations.

Notes: *** = $p < .001$; ** = $p < .05$; * = $p < .10$.

Another way to think about what happens in a JPE adoption model is to consider the smoothed hazard ratio. In the hazard ratio graph shown in Figure 15 the line follows the s-shaped curve found in previous studies of policy diffusion (for example, Rogers, 2003 or Berry and Berry, 1990; 1999). Rather than examining how long a case survives, the hazard ratio considers the opposite perspective: when will the case fail to exist? That is, when will JPE policy adoption occur?

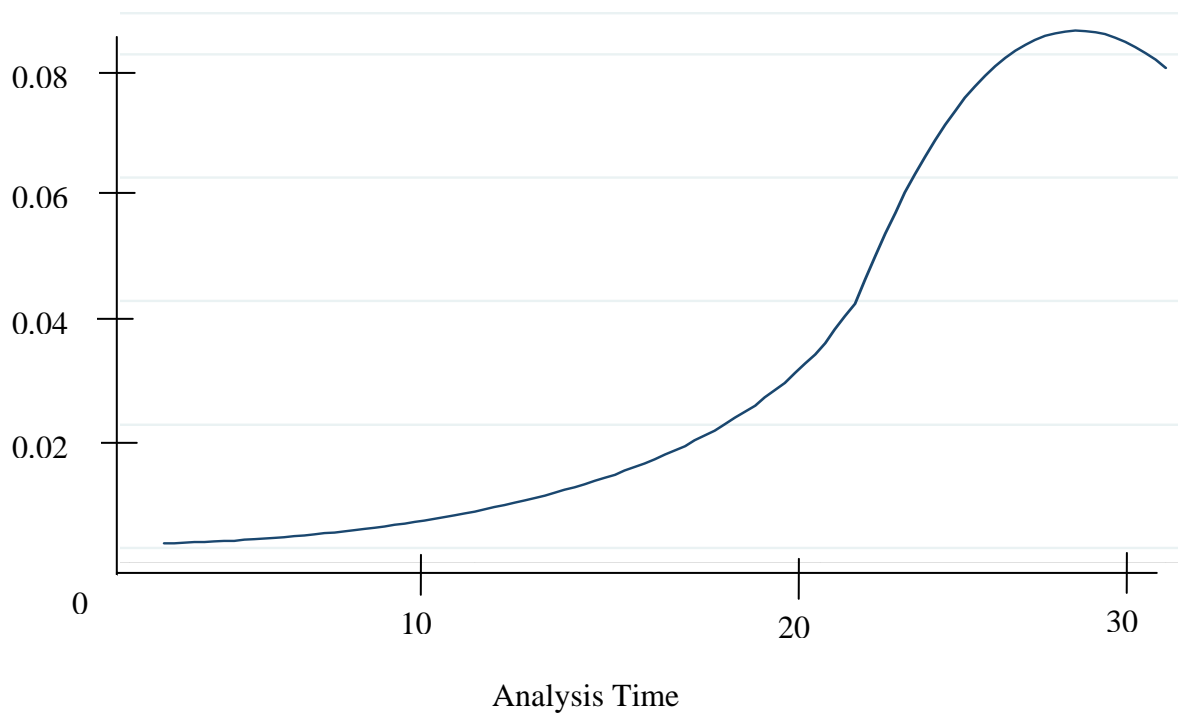


Figure 15. Smooth Hazard Estimate

Source: Author's calculations.

According to the graph of the hazard ratio over time, most of the cases are expected to adopt the program at an accelerating rate by year 30 and will then begin to adopt at a slower pace. The fastest pace of adoption will occur between years 20 and 30. As seen in Figure 13, the hazard ratio decreases around year 25. This pattern conforms to Rogers' model of diffusion (2003) as well as to the adoption pattern from other studies (for example, Berry & Berry, 1990).

The Diffusion Model

The results I report are from Model One unless otherwise noted (see Table 15).

Motivation for Policy Diffusion

H1a: States where political competition is greater are more likely to adopt JPE.

To test the political competition hypothesis I used a variable including information about the political party in charge of the governor's office as well as both houses of the state legislature². The results of my model suggest political party has no significant effect on the likelihood that a JPE program will be adopted. Political party in charge is a significant covariate only in Model 5 when the Erikson, Wright, McIver ideology variables are not included. In Model 5 when the Republican Party is in majority control of both houses of state government and the governor's office, there is an 8 percent increase in the likelihood (hazard rate) that a state will adopt a JPE program. Otherwise, in all other models unified political party control has no impact on the likelihood of JPE policy adoption.

One potential mechanism for expanding and improving analysis of this concept would be to consider more refined measures of political resistance. For example, Barrilieux, Holbrook, and Langer (2002) use a district-level electoral competitiveness variable in their examination of the behavior of politicians. The electoral competitiveness measure considers the percentage of the vote awarded to the winner of the election and the percentage of his or her margin of victory as well as how many seats were being contested and the percentage of seats that were safe. The data vary over time

and are a better approximation of the political wrangling that may hamper policy adoption at the state level.

H1b: States where the crime rate is higher are more likely to adopt JPE.

To test the impact of crime on the adoption of policies designed to provide more accountability for state courts, I included both the violent crime rate and property crime rates as calculated by the Bureau of Justice Statistics in the *Unified Crime Reports* (various years). Both are time-varying state level variables. The violent crime rate ranges from 47 to 1267 violent crimes per 100,000 residents. The property crime rate is understandably much higher and ranges from 1620 to 7996 crimes per 100,000 residents. Interestingly, these variables produce mixed results.

The violent crime rate is not significantly related to an increased likelihood of adopting a JPE program. However, though property crimes are significantly and positively related to the likelihood of policy adoption, the effect is inconsequential. With a hazard ratio of 1.00, the relative risk associated with an increase in property crime is basically meaningless. There is only a one-tenth of one percent difference in the rate of adoption of JPE when property crime is increasing by one percentage point relative to non-adoption of JPE. Since the effect size is so slight it is not an important predictor of JPE policy adoption and explains relatively little of the variation in the model.

Even though property crime rate is not making a powerful contribution to the explanatory power of the model, one might wonder if this acts as a proxy for demographic variables such as income, race, or education. That is, wealthier, better

educated citizens from majority racial groups would be less tolerant of higher crime rates and would demand action from the judicial branch which would lead to “safer” neighborhoods. These citizens might also have a higher sense of political efficacy and be more likely to report crime. Moreover, they might seek to influence the criminal justice process by demanding judicial branch reforms that increase accountability including measures like JPE. In this sense, demographic variables might carry more explanatory weight than property crime rate and contribute more to the explanation of the likelihood that a JPE program would be adopted. A cynical view would be that violent crime tends to occur more often in lower income, less educated neighborhoods where burglaries are less likely to mean that the thief gets away with expensive jewelry or electronics. Nonetheless, this is largely conjecture and something that warrants further research.

Resources and Obstacles to Diffusion

The major finding of this study is that legislative professionalization has a strong influence on the likelihood of JPE adoption. Legislative professionalization may link back to policy entrepreneurship seen in previous work on networks in public organizations. JPE may be a signal or surrogate for policy entrepreneurship with legislatures acting as policy entrepreneurs who become the “idea champions” (Kanter, 2000) pushing the reform forward and lending credibility, resources, and motivation for successful program implementation in the judiciary.

Though other diffusion studies find political ideology, party control, fiscal health, and citizen sophistication to be important influences on likelihood of innovation diffusion,

my findings suggest that the judiciary may be a different enough arena that traditional diffusion models will not hold. That is, diffusion may not be a “one size fits all” theory.

Context matters. The judicial branch is designed to be different in function and responsibility than either the legislative or executive branch. Public management scholars should recognize this in the ways we study courts, especially state courts. In addition to recognizing that the context courts work in is important, scholars should have a more focused discussion about the types of issues we study in diffusion models. The passage of a lottery is very different from politics and resource pressures surrounding proliferation of charter schools or judicial performance evaluation programs. Management reform is different than same-sex marriage legislation. Though administrative reform often fails to garner the excitement or interest often associated with issues like lotteries or gay marriage, scholars must recognize that these are very different in process, function, and policy than performance measurement including JPE. Given this, the fact that my models do not support findings of other diffusion studies focused on policies outside state court systems, I suggest that diffusion study should be reconsidered with attention on identifying variables that truly represent the underlying influences on the policy adoption process for legislatures working to support state court systems.

H2a: State populations with more liberal political ideology are more likely to adopt JPE.

Berry, Ringquist, Fording, and Hanson (2007) suggested that more liberal citizens coupled with liberal elites are more likely to adopt innovative, new policies. The BRFH

measure ranges from 2 to -2 where 2 is more liberal and -2 is more conservative. My results contradict the literature. I find citizen ideology is not an indicator of policy adoption, but that elite ideology is positively linked to the increasing likelihood that a state adoption of JPE will occur. That is there is a two percent increase in the adoption rate of JPE when elites (governors, legislators) are slightly more conservative than when elites are more liberal. A better way to parse this may be to suggest that when elites are moderate there is a positive, though slight, impact on the adoption of JPE.

H2b. States where the Republican Party is in the majority in the state legislature and controls the governorship are less likely to adopt JPE.

The hazard rate for political party in charge is 1.08 ($p = .16$) but this variable does not contribute to the explanatory power of the model and I reject this hypothesis. This is an unexpected result. The literature suggests that political party is a factor in policy adoption decisions. However, at least in this dataset, this is not the case.

Political party relates to political ideology. Party elite ideology is a reflection of state citizen ideology leading to adoption or rejection of different public policy options (Erikson, Wright, McIver, 1987). The political culture of states provides a foundation for the values and beliefs citizens use to determine the appropriate role of government (Elazar, 1969; Erikson, Wright, McIver, 1987). Elites respond to cues from citizens as policy options are considered. Therefore, when more conservative citizens elect Republican representatives, the likelihood for adopting new policies decreases. In this

climate, the likelihood that a JPE program would be adopted is lessened as well.

H2c: States with higher levels of citizen sophistication are more likely to adopt JPE.

Citizen sophistication is also not a significant predictor of JPE adoption. As with the case of the property crime variable, this relationship might be stronger if demographic traits could be included in the regression model. In that case further hypothesis testing could be done to test for differences between groups (for example, differences in the percentage of a state population by educational level). But the absence of a significant relationship between citizen sophistication and JPE adoption may also occur because the ideology measures are not time variant. Previous research suggests that ideology is stable over time; however, with increased population migration and the effects of the internet and other media, shifts in ideological identification may be more likely to occur over far shorter periods of time. This is an area for future research.

H2d: States with greater degrees of fiscal health are more likely to adopt JPE.

States with more revenues than expenditures are more likely to adopt JPE programs. Slack resources give legislators opportunities to explore new solutions to existing problems. This result is expected and is agreement with existing literature.

However, the fiscal health variable has a scant impact on the overall explanatory power of the model. This suggests that financial resources make some difference in appetite for policy adoption but a more refined measure may be even more useful in

developing an understanding of why states would choose to evaluate state court judges.

As is, this measure indicates that declining state fiscal health decreases the likelihood that a state will be able to adopt new innovations like JPE.

H2e: States with higher degrees of legislative professionalization are more likely to adopt JPE.

Legislative professionalism is a highly significant ($p < .01$) and positive explanation for the likelihood of JPE adoption occurring. Though the hazard ratio for this variable is large (18.62), the result indicates that professionalized legislators play a significant role in policy adoption decisions. Lawmakers whose primary job is to care for matters of state are able to focus time, resources, attention, and expertise on issues relative to operation and administration of governmental departments. Oppheim (1990) has found that professionalized legislatures are more satisfied with their work because superior resources are available to them in comparison to those available to amateur legislators. These public servants are likely subject matter experts working on committees with trained analytical staff to provide information about the legal, fiscal, and administrative impact of potential state actions. Therefore, with an increase in legislative professionalism comes a marked increase in the likelihood of JPE policy adoption. This finding may mean that where states lack a professionalized legislature the possibility for adopting this policy is virtually non-existent.

The specialization and education that come with professionalized legislatures in which these elected servants have access to benefits, salaries, support staff, and other

benefits, increases the amount of attention policy makers can afford to devote to issues requiring official state policy decisions. Professional legislators may have greater analytical powers than their amateur counterparts (Squire, 1993). Given that this is such an important explanatory variable in my model, it warrants further study. How professionalized legislatures treat state court systems relative to non-professionalized legislatures may shed some light on how well the judiciary is understood by other branches of government.

Other policies related to JPE diffusion

Participants in JPE states and other interest parties have suggested that merit selection plays an important role in whether JPE is adopted (Conklin, 2007; Ellis, 2006; Howell, 2007) but this model shows that selection systems have relatively little influence one way or another.

Though all of the selection variables have a significant impact ($p < .05$) on the likelihood that a JPE program will be adopted, there is not a large magnitude of influence between these variables and JPE program adoption. These findings are reported with a cautionary note. Some selection system variables are not well populated. For example, there are only two states using legislative appointments to fill judicial vacancies. Given the limited number of observations for some categories, there could be problems with the power of the model. In addition, sample size alone ($N = 1,550$) would mean that most variables would be significant, even with lower (or no) impact on the overall predictability of the model.

H3a: States that use a merit selection process to fill judicial vacancies are more likely to adopt JPE.

Approximately 12 percent of state appellate courts during 1976 through 2006 were filled through merit-based processes. During the same time, 14 percent of trial benches were seated using the same method. As expected, the hazard ratios for merit selection processes are significant and positively related to the increased likelihood that a state will adopt a JPE policy. The hazard ratio for merit selection at the state appellate level is 3.32. This means that states using merit selection processes to fill appellate court judicial vacancies are more likely (332 percent) to adopt JPE programs than states without merit based processes in place. When trial court judges are selected through merit based processes the relative risk of adoption decreases by nine percent. That is, trial court merit selection actually lowers the likelihood of state JPE adoption. During the 30 years studied, only five percent of all trial court judges were selected through merit, or Missouri, plans.

H3b: States that use either gubernatorial or legislative appointment systems to fill judicial vacancies are less likely to adopt JPE.

The data suggest that the magnitude of impact appointment processes have on the likelihood of JPE policy adoption is large. Appointing either trial or appellate courts through gubernatorial or legislative appointment processes increases the likelihood of JPE adoption by more than 550 percent. Almost 40 percent of state court judges in states with JPE programs, at either the appellate and trial level, are selected through either

gubernatorial or legislative appointment (Book of the States, 2007). Even so, there is no state in which trial court judges are selected through an appointment process and where appellate court justices are not. This means that with no observations in this category, the model may not be able to accurately predict the significance and explanatory power of this variable.

H3c: States that use a non-partisan election process to fill judicial vacancies are less likely to adopt JPE.

There is a negative relationship between non-partisan elections for appellate courts and JPE adoption. Surprisingly, this is the largest impact that selection system variables have on the dependent variable. However, the standard error for this variable is quite large indicating the result should be reported with caution. Non-partisan elections were used 20 percent of the time to fill judicial openings from 1976 to 2006 (Book of the States, various years). In the states in which JPE programs have been adopted seven percent of appellate judges are selected using non-partisan elections and ten percent of trial court judges get elected through non-partisan races. The overwhelming majority of states using non-partisan elections do so at both levels of state courts (97 percent) (Book of the States, various years).

JPE adoption is most likely when appellate judges are selected through non-partisan elections. The hazard ratio for this variable is 24.54 ($p < .01$) indicating that this is an important characteristic with a substantial contribution to illuminating the

conditions that make state policy adoption more likely. This finding is unexpected and a bit surprising.

H3d: States that use a partisan election process to fill judicial vacancies are less likely to adopt JPE.

A pattern similar to that found in non-partisan judicial selection emerges with partisan election of appellate court judges. However, in this case there is a positive relationship between partisan election and the adoption of JPE. The variable is significant ($p < .05$) and suggests that when appellate court judges are elected through partisan races, the likelihood of JPE adoption increases. However, again there is a large standard error associated with this predictor. One possible explanation for the large standard errors may be that there are few cases in each variable. With 18 degrees of freedom necessary to estimate a model with all the selection dummy variables included, having few cases for any one judicial selection variable might negatively impact the reliability of the result.

External Motivators for Policy Diffusion

Policy diffusion models typically include a geographic variable testing whether states close to other states with similar programs are more likely to adopt the policy in question. I followed the literature and included percent bordering states as a covariate. The EHA model of JPE diffusion suggests that geography does not play a factor in either increasing or decreasing the likelihood of a JPE program being adopted by a state. This finding is inconsistent with the body of literature on policy diffusion. To investigate the

reliability of this finding, I looked at the effect of geography more deeply.

I analyzed states clustered and isolated by conducting a series of simulations. Ten random samples of 20 states each were drawn. Each sample was examined to determine how many states cluster together in each sample. Figure 16 shows the average number of clustered states for each sample. The average number of clustered states with JPE programs is shown in the first column and shaded green. Only two of ten random samples have fewer clustered states than the 2006 JPE sample. If geographic proximity explained the adoption of JPE then the number of JPE clusters would be greater than random samples of states. As it turned out, there were more isolates in my actual sample than found in the simulation. Being near a state with a JPE program does not mean that JPE is more likely to diffuse between state borders. This finding validates my finding that geographic proximity no longer adequately contributes to explanations of diffusion of state policies because it shows that a random sample contains more clusters of states than the actual JPE sample.

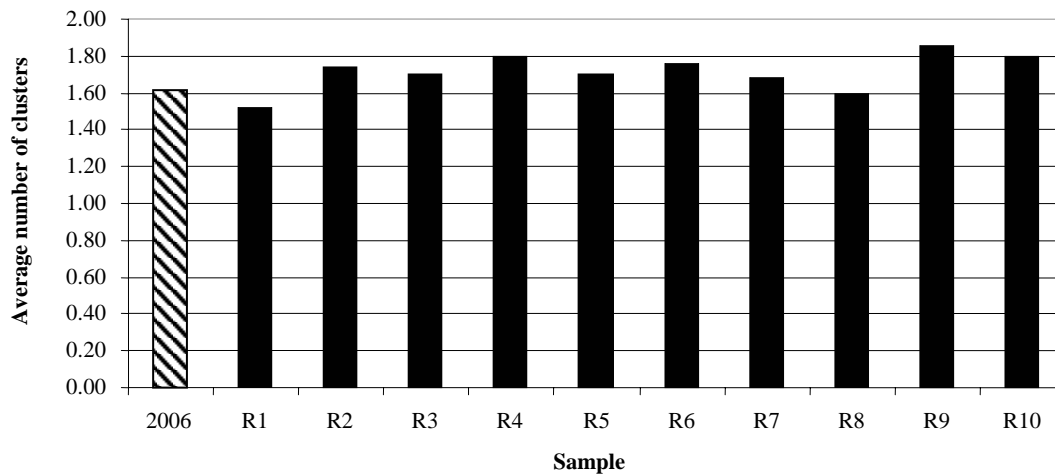


Figure 16. Comparison of Actual versus Random Samples of Clustered States

Source: Author.

Note: A list of the states included in each random sample is provided in Appendix F.

H4a: States bordered by a higher percentage of other states with JPE programs are more likely to adopt JPE.

Because there were minor collinearity issues between bordering states and distance from state capital to nearest JPE program; both were not included in the model. When a model was estimated with border and not capital mileage the geography variable was not significant. This could be because of the decreased importance of geographic proximity relative to 1990 when the Berry and Berry model was initially estimated. With increased reliance on electronic communication and the building popularity of virtual networks, having easy access to peers may be less important. This variable was not a factor in the stand-alone model so it is not included in other parts of this analysis.

H4b: States with capital cities located geographically closer to other state capital cities where JPE has been adopted previously are more likely to adopt JPE.

Distance between the state capital and nearest JPE program has a positive effect on JPE adoption. One explanation for this could be that the number of states bordering another is less important than the ease stakeholders have in communicating with one another. A different explanation could be that as distance decreases and media markets overlap, citizens become more similar. Cultural norms and expectations may be a factor in a state adoption decision. Finally, mileage is a more refined measure than percent border states. For example, when considering states like Maine that have only one neighbor, there can be less meaning in a 100 percent border state measure (Maine has been in this situation since New Hampshire adopted JPE in 1987). Therefore, mileage may actually measure the concept more accurately than border percentages. Even so, the hazard ratio is essentially equal to 1. In this case, there is a minimal, probably marginal at best, impact of distance on adoption. Therefore, the finding that this factor is no longer a meaningful measure for explaining policy adoption decision holds.

Diffusion of JPE and Does it Matter?

Existing comparative state policy studies suggest that geography, politics, money, and related factors increase the likelihood that new policy adoptions will occur (Berry & Berry, 1992; Mahan & Peterson, 1985; Mintrom, 1997; Karch, 2007). Using those studies as guides I investigated variables related to each factor in studying the procession of JPE through the American states. I find that internal determinants are more likely to affect an increased

likelihood of a state adoption of JPE. Specifically, legislative professionalization, fiscal health, and to a marginal extent type of judicial selection system are more related to the likelihood of JPE adoption than geographic proximity. The intrastate environment determines whether JPE will be adopted by the state legislature or state high court.

At the start of this study I posed two research questions. In the first I consider the factors related to policy diffusion in other studies by looking at JPE programs over time. The second question asks if JPE is a major court reform. My research allows me to contribute to our understanding of both issues. Unlike existing diffusion studies, my results suggest that geography is not an important factor in the spread of policies between states. Though my models are exploratory rather than confirmatory, my results appear to suggest that geographic proximity may no longer be a major factor in policy diffusion. I suspect this finding could be explained by an increased reliance on virtual communication and networks. However, I have neither the data nor resources to investigate this idea more fully at this time.

Though Model 1 is the preferred specification, there are notable similarities among all six models. For most models political party appears not to play into JPE policy diffusion. In addition, increasing crime rates appears to have little or no impact on JPE policy adoption. These findings suggest that JPE policy diffusion is motivated by factors other than those included in these models. Collecting data on stakeholder communication could provide more information on the influence peers have in state policy decisions. However, obtaining historical records of attendance at state legislative conferences or at meetings held

by influential groups such as the National Governor's Association is a difficult, if not impossible, task. Nonetheless, that sort of information could help explain motivational factors for policy diffusion.

Previous research (e.g., Berry & Berry, 1990; 1992) found that geographic proximity is positively related to policy diffusion. However, with increasing reliance on virtual environments and electronic forms of communication, including blogs, message boards, e-mail, and other formats, stakeholders are can interact with other stakeholders more efficiently and, perhaps, in a more timely fashion. Peer groups previously categorized by region may now look for other characteristics (perhaps like those used to create performance scores in the Government Performance Program (Pew, 2005)), similarities or "best practices" leading to policy adoption decisions.

I expected judicial selection to be an important factor in whether JPE is adopted by states and my model confirms this hypothesis. However, merit selection processes did not have the dramatic effect that I anticipated. Even though judicial selection plays a role in how judges get their jobs, citizens may be unaware of the impact selection has on candidate races or on merit retention. Without better information about citizen information, voting practices, and the like I can not explore this idea more fully.

Resources and obstacles are critical for state-level policies to be enacted. Having the funding available to operate basic programs allows stakeholders, including legislators and other actors, to begin innovative thinking in new policy arenas. Moreover, the specialization and education that come with professionalized legislatures in which legislators have access to benefits, salaries, support staff, and other benefits increases the

amount of attention policy makers can afford to devote to issues requiring official state policy decisions. When a state lacks money or personnel, including legislative analysts, staff in the state Administrative Office of the Courts, or others with the responsibility for administrative and fiscal accountability, scant resources may contribute to how actors make policy decisions.

Legislative professionalism is very important for the successful adoption of JPE programs. This makes sense. When legislators have the time, staff, and empirical research to support decisions on new programs or spending bills, they are more likely to adopt new policies. Where professionalized legislatures conduct state business, JPE is more likely to be found. This supports previous research and offers a line for new inquiry as well. Perhaps professionalized legislatures are one part of the explanation but professionalized court support staff is the other. In this case, where judges have professional court administrators to do the management of the court system, trained legal aids including law clerks and paralegals, and robust budgets to handle case management and court technology JPE could be a useful court reform. However, I can not answer these questions with the data and analysis available at this point. These are areas for future research.

JPE is a new, innovative way to explain policy diffusion. It offers a new arena to extend public administration and public policy research and to join these ideas with studies in court reform. However, without better data and more extensive information about who has a stake in state judicial systems explanatory models can not be fully specified. Collecting this information will require a gargantuan effort as historical information about state court systems are difficult to find, access, and analyze.

Limitations

This study is limited by data collection and availability. A major issue challenging the study of the diffusion of JPE programs in the United States is that it is difficult to find historical information about the process. People have moved on to other jobs, retirement, or in some cases have died. The information about social networks, how JPE discussions began, and who the major players were leaves with them. Few states have documented the process. Unfortunately, this reality supports one of the critiques of diffusion research: recall problems are huge hurdles. Time is an essential part of diffusion models (Rogers, 2003: 126; Berry and Berry, 1990). Asking people to remember the past may mean that inaccuracies are uncovered or that no information is available at all (Rogers, 2003: 127).

The distributions of variables that are included are possibly another limitation of this study. Some of the variables are not well populated and others have skewed distributions. A semi-parametric approach lessened the impact that an unknown distribution has on the predictive power of the model, but a fully specified model is still impossible. Nonetheless, the choice to use a Cox Proportional Hazard approach is an acceptable way to study policy diffusion when all the members of a population have not adopted the policy.

Collecting data on state courts and state institutions is difficult because of the scope and size of the effort required. Historical data often exist only in paper records that require substantial amounts of time and person-power to uncover. As a result, variables

like the number of court staff, court budgets, and other information specific to state court systems have not been used in this study. That kind of information would be helpful in determining whether resources play a part in court system acceptance of JPE programs.

Finally, judicial selection systems differ by state and type of court. Some categories within these variables are sparsely populated making the explanatory power of the information available less reliable. For example, the merit selection variable was not as predictive as I originally suspected it would be. This finding could be related to the fact that few states that have JPE programs use trial court merit selection meaning that the distribution of the data creates problems with the model related to this variable. The appointment selection variable was also not as I expected. In this case the problem may be that there is no information for the model to use in drawing conclusions. That is, there is no state where trial court judges are selected through an appointment process and where appellate court justices are not. Again, this may impact the ability of the model to accurately predict the relative risk of JPE adoption.

Chapter Six Notes

¹ Unofficial adoptions by groups such as state bar associations also exist. A complete list of the unofficial programs existing in 2008 can be found in Appendix G, Figure 15.

² Nebraska has a unicameral legislature. When the majority party of the legislature matched that of the governor control was allocated to that party. When there was a difference the majority was coded as “other” and not included in the analysis.

REFERENCES

- Administrative Office of the Courts. (2003). *Understanding the Federal Courts*. Office of Judges Programs, Washington, DC.
- Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, 566, (1999).
- Albriton, R.B. & Dran, E.M. (1987). Balanced budgets and state surpluses: the Politics of budgeting in Illinois. *Public Administration Review*, 47(2): 143-152.
- American Bar Association. (2000, July). *Standards on state judicial selection: Report of the ABA Standing Committee on judicial independence commission on state judicial selection standards*. Retrieved November 28, 2007, from www.abanet.org/judind/downloads/reformat.pdf.
- American Judicature Society. (2004). *Judicial selection in the states: methods of judicial selection*. Retrieved September 21, 2007 from http://www.judicialselection.us/judicial-selection/methods/judicial_performance_evaluations.cfm.
- Americans with Disabilities Act of 1990*, Pub. L. No. 101-336, §2, 104 Stat. 328 (1991).
- Atkins, B., Mathew, D., & Eckert, W. (1984). State supreme court elections: the significance of racial cues. *American Politics Quarterly*, 12: 211.
- Aumann, F.R. (1931). Selection, tenure, retirement, and compensation of judges in Ohio. *University of Cincinnati Law Review*, 5(11): 412.
- Bacot, A.H. & Dawes, R.A. (1997). State expenditures and policy outcomes in environmental program management. *Policy Studies Journal*, 25(3): 355-370.
- Barrileaux, C., Holbrook, T., and Langer, L. (2002). Electoral competition, legislative balance, and American state welfare. *American Journal of Political Science*, 46(2): 415-427.
- Baum, L. (1983). The electoral fate of incumbent judges in the Ohio Court of Common Pleas. *Judicature*, 66: 420.
- . (1987). Explaining the vote in judicial elections: the 1984 Ohio Supreme Court elections. *Western Political Quarterly*, 40 (June): 361-71.

- . (1997). *The puzzle of judicial behavior*. Ann Arbor, MI: University of Michigan Press.
- Baumgartner, F. R. & Jones, B.D. (1993). *Agendas and instability in American politics*. Chicago: The University of Chicago Press.
- . Eds. (2002). *Policy dynamics*. Chicago: The University of Chicago Press.
- Beiser, E.N. (1973). The Rhode Island Supreme Court: A well-integrated political system. *Law and Society Review*, 8(1): 167-186.
- Berg, A., & Schaffer, J., Ackerman, A. (Director). (1995). The secret code. In L. David, *Seinfeld*. New York: National Broadcasting Company.
- Berggren, H.M. (2001). Institutional context and reduction of the resource bias in political sophistication. *Political Research Quarterly*, 54(3): 531-552.
- Berkowitz, D. & Clay, K. (2006). The effect of judicial independence on courts: Evidence from the American States. *Journal of Legal Studies*. 35(2): 399-440.
- Bell, D. (2001). Engler to ask for appointed high courts. *Detroit Free Press*, January 27.
- Berry, F. (1994). Sizing up state policy innovation research. *Policy Studies Journal*, 22: 442-56.
- Berry, F. & Berry W. D. (1990). State lottery adoptions as policy innovations: An event history analysis. *American Political Science Review*, 84: 395-415.
- . (1991). Specifying a model of state policy innovation. *The American Political Science Review*, 85(2): 571-579.
- . (1992). Tax innovation in the states: Capitalizing on political opportunity. *American Journal of Political Science*, 36: 715-42.
- . (1999). Innovation and diffusion models in policy research. *Theories of the Policy Process*. Paul Sabatier, ed. Boulder, CO: Westview Press.
- Berry, W.D., Ringquist, E.J., Fording, R.C., and Hanson, R.L. (1998). Measuring citizen and government ideology in the United States. *American Journal of Political Science*, 42(1): 327-348.

- . (2007). The measurement and stability of state citizen ideology. *State Politics and Policy Quarterly*, 7(2): 111-132.
- Bertelli, A. & Lynn, Jr., L.E. (2004). Policymaking in the parallelogram of forces: Common agency and human services provision. *Policy Studies Journal*, 32(2): 167-185.
- Blossfeld, H.P., Golsch, K., & Rohwer, G. (2007). *Event History Analysis with STATA*. Mahwah, New Jersey: Lawrence Erlbaum Associates.
- Bonneau, C. W. (2004). Patterns of campaign spending and electoral competition in state supreme court elections. *Justice System Journal*, 25: 21-38.
- . (2007a). Campaign fundraising in state supreme court elections. *Social Science Quarterly*, 88(1): 68-85
- (2007b). The effects of campaign spending in state supreme court elections. *Political Research Quarterly*, 60(3): 489-499.
- Bowens, B. (2008, March 13) Police: UNC, Duke slayings not gang-related. *WRAL.com*. Retrieved March 18, 2008 from <http://www.wral.com/news/local/story/2574060/>.
- Bowers, R. V. (1937). The direction of intra-societal diffusion. *American Sociological Review*, 2: 826-836.
- . (1938). "Differential Intensity of Intra-Societal Diffusion." *American Sociological Review*. 3: 21-31.
- Box-Steffensmeir, J. M. & Jones, B. S. (2004). *Event history modeling: A guide for social scientists*. New York: Cambridge University Press.
- Boyum, K. (1979). A perspective on civil delay in trial courts. *The Justice System Journal*, 5: 170.
- Boyum, K. & Hudzik, J.K. (1991). Overview and introduction to the special issue. *The Justice System Journal*, 15(2): 550-562.
- Bozza, J.A. (1998). Policy-based budgeting: Performance and fiscal accountability in the courthouse. *The Justice System Journal*, 20(1): 63-93.
- Brace, P. & Gann-Hall, M.G. (1990). Neoinstitutionalism and dissent in state supreme courts. *Journal of Politics*, 52 (February): 55-70.

- (1993). Integrated models of judicial dissent. *Journal of Politics*, 55 (November): 914-935.
- (1995). Studying courts comparatively: the view from the American States. *Political Research Quarterly*, 48 (March): 5-29.
- (1997). The interplay of preferences, case facts, context, and structure in the politics of judicial choice. *Journal of Politics*, 59 (November): 1206 – 1231.
- (2000). Comparing courts using the American States. *Judicature*, 83 (March-April): 250-66.
- Brace, P.G., Arceneaux, K., Johnson, M., & Ulbig, S.G. (2002). Does state political ideology change over time? *Political Research Quarterly*, 57(4): 529-540.
- Brace, P.G., Hall, M.G., and Langer, L. (2001). Placing state supreme courts in state politics. *State Politics and Policy Quarterly*, 1(1).
- Bradbury, J.C., & Crain, W.M. (2002). Bicameral legislatures and fiscal policy. *Southern Economic Journal*, 68(3): 646-659.
- Bragdon v. Abbott*, 524 U.S. 624, 637 (1998).
- Bretschneider, S.L., Gorr, W.L., Grizzle, G., & Klay, E. (1989). Political and organizational influences on the accuracy of forecasting state government revenues. *International Journal of Forecasting*, 5: 307-319.
- Bretschneider, S.L. & Gorr, W.L. (1992). Economic, organizational, and political influences on biases in forecasting state sales tax receipts. *International Journal of Forecasting*, 7: 457-466.
- Brett, J. F., & Atwater, L. E. 2001. 360 degree feedback: Accuracy, reactions, and perceptions of usefulness. *Journal of Applied Psychology*, 86(5): 930-942.
- Burgess, J. W.. (1902). *Political Science and Comparative Constitutional Law*. Boston: Ginn.
- Campbell, L. (2002). An absurd system gets even worse. *Dallas-Fort Worth Star Telegram*, November 21.
- Canon, B.C. (1972). The impact of formal selection processes on the characteristics of judges – reconsidered. *Law and Society*, 6: 579.

- (1973). Reactions of state supreme courts to a U.S. Supreme Court civil liberties decision. *Law and Society Review*, 8(1): 109-134.
- Canon, B.C. & Baum, L. (1981). Patterns of adoption of tort law innovations: An application of diffusion theory to judicial doctrines. *American Political Science Review*, 75: 975-87.
- Carbon, S.B. (1980). Judicial retention elections: Are they serving their purpose? *Judicature*, 64: 210.
- Carlson, K. (2008, March 14). Judge: N.C. needs anti-gang laws now. *WRAL.com*. Retrieved on March 18, 2008 from <http://www.wral.com/news/local/story/2581231/>.
- Carlton, A. P. (2003). New strategies for state court reform. *Spectrum: the Journal of State Government*, 76(3): 30-34.
- Caulfield, Rachel. (2004). Judicial selection in the United States: A special report. *American Judicature Society*.
- Chamberlain, R. & Haider-Markel, D.P. (2005). "Lien on me": State innovation response to paper terrorism. *Political Research Quarterly*, 58(3): 449-460.
- Charbonneau, M. (2008, March, 5). Woman, found dead near UNC, shot multiple times. *WRAL.com*. Retrieved on March 18, 2008 from <http://www.wral.com/news/local/story/2527109/>.
- Christensen, K. (Executive Producer). (1995, October 9). ABC World News Tonight [Television broadcast transcript #5201]. New York: American Broadcasting Company.
- Chou, R., Bowens, D., Lewis, J., & Owen, A. (2008, March 13). UNC murder suspect also charged in Duke grad student's death. Retrieved on March 18, 2008 from <http://www.wral.com/news/local/story/2569358/>.
- Cogburn, J.D. 1998. Professional notes: subordinate appraisals of managers: Lessons from a state agency. *Review of Public Personnel Administration*. 18(1): 68-79.
- Cohen, M.D., March, J.G., & Olsen J.P. (1972). A garbage can model of organizational choice. *Administrative Science Quarterly*, 17(1): 1-25.
- Commons, J.R. (1924). *Legal Foundations of Capitalism*. New York: Macmillan.

- Cook, T.D. & Campbell, D.T. (1979). *Quasi-experimentation: Design and analysis issues for field settings*. Boston: Houghton Mifflin Company.
- Cooley, C. H. (1956). *Social Organization*. Glencoe, IL: Free Press. (Original work published in 1902).
- Cooper, J. (2001). The twentieth century congress. In L.D. Dodd & B.I. Oppenheimer (Eds.), *Congress reconsidered* (pp. 335-366). Washington, DC: Congressional Quarterly Press.
- Council of State Governments. Years 1976-2006. *The Book of the States*. Chicago: Council of State Governments.
- Croley, S.P. (1995). The majoritarian difficulty: Elective judiciaries and the rule of law, *62 U. Chicago Law Review* 689: 713-29.
- Daines, R. (2001). Does Delaware law improve firm value? *Journal of Financial Economics*, 62: 559-571.
- (2002). The incorporation of choices of IPO firms. *New York University Law Review*, 77(6): 1559-1611.
- Daley, D. M. 1985. An examination of the MBO/Performance Standards Approach to employee evaluation: attitudes towards performance appraisal in Iowa. *Review of Public Personnel Administration*, 6(10): 11-28.
- . 2007. The trials and tribulations of performance appraisal: Problems and prospects in the 21st century. Unpublished manuscript.
- DeLeon, L., & Ewen, A.J. 1997. Multi-source performance appraisals: Employee perceptions of fairness. *Review of Public Personnel Administration*. 17(1): 22-36.
- DiMaggio, P.J. & Powell, W.W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review* 48: 147-160.
- (1991). *The new institutionalism in organizational analysis*. Chicago: University of Chicago.
- Dorfman, P. W., Stephan, W. G., & Loveland, J. 1986. Performance appraisal behaviors: Supervisor perceptions and subordinate reactions. *Personnel Psychology*, 39: 579-597.

- Douglas, J.W. & Hartley, R.E. (2001). State court strategies and politics during the appropriations process. *Public Budgeting and Finance*, 21: 35-57.
- Downs, A. (1972). Up and down with ecology: The issue attention cycle. *Public Interest*, 28, 38-50.
- Dreschel, R.E. (1985). Judicial selection and trial judge-journalist interaction in two states. *The Justice System Journal*, 10(1): 6-18.
- Dubois, P.L. (1980). *From ballot to bench: Judicial elections and the quest for accountability*. Austin: University of Texas Press.
- (1983). The influence of selection system and region characteristics of a trial court bench: The case of California. *The Justice System Journal*, 8: 59.
- (1984). Voting cues in nonpartisan trial court elections: A multivariate assessment. *Law & Society Review*, 18: 395.
- (1985). State trial court appointments: Does the governor make a difference? *Judicature*, 69: 20.
- (1986). Penny for your thoughts? Campaign spending in California trial court elections. *Western Political Quarterly*, 39 (June): 265-84.
- (1988). The illusion of judicial consensus revisited: Partisan conflict on an intermediate State Court of Appeals. *American Journal of Political Science*, 32: 946-67.
- Dye, T. R. (1966). *Politics, economics, and the public: Policy outcomes in the American States*. Chicago: Rand McNally.
- . (1980). Taxing, spending, and economic growth in the American states. *Journal of Politics*, 42: 1085-1107.
- Eadington, W.R. (1999). The economics of casino gaming. *The Journal of Economic Perspectives*, 13: 173-192.
- Eisenhardt, K.M. (1989). Agency theory: An assessment and review. *The Academy of Management Review*, 14(1): 57-74.
- Elliot, J.R., Jr. (2002). Pittman: Voters should choose way to pick judges. *Biloxi Sun-Herald*, November 28.

- Emmert, C.F. (1992). An integrated case-related model of judicial decision-making: Explaining state supreme court decisions in judicial review cases. *Journal of Politics*, 54 (May): 543-552.
- Epstein, L. & Knight, J. (1998). *The choices justices make*. Washington, DC: CQ Press.
- Escovitz, S.S., Kurlnad, F., & Gold, N. (1975). *Judicial selection and tenure 4*. Chicago: American Judicature Society.
- Esterling, K.M. & Andersen, S.S. (1999). *Diversity and the Judicial Merit Selection Process: A Statistical Report*, in Research on Judicial Selection 1999, American Judicature Society (ed.).
- Fama, E. (1980). Agency problems and the theory of the firm. *Journal of Political Economy*, 88(2): 288-307.
- Fama, E. & Jensen, M. (1983). Separation of ownership and control. *Journal of Law and Economics*, 26(2): 301-325.
- Farmer, J. (2001). Justice for sale in Pennsylvania. *Newark Star-Ledger*, August 17.
- Feeley, M.M. & Rubin, E.L. (1998). *Judicial policy making and the modern state: how the courts reformed prisoners*. New York: Cambridge University Press.
- Fiorina, M.P. (1999). Further evidence of the partisan consequences of legislative professionalism. *American Journal of Political Science*, 43(3): 974-977.
- Flango, V.E. (1975). Court administration and judicial modernization. *Public Administration Review*, 35: 619-624.
- Flango, V.E. & Ducat, C.R. (1979). What difference does method of judicial selection make? Selection procedures in state courts of last resort. *Justice System Journal*, 5: 25-44.
- Francis, B.B., Hasan, I., John, K., & Waisman, M. (2006). Does Delaware incorporation affect the firm's cost of debt capital? Available at SSRN: <http://ssrn.com/abstract=890870>.
- Garson, G. David (n.d.). "Data imputation for missing values", from *Statnotes: Topics in Multivariate Analysis*. Retrieved 02/28/2008 from <http://www2.chass.ncsu.edu/garson/pa765/statnote.htm>.

- Gillman, H. (1997). The new institutionalism, part I. More and less than strategy: Some advantages to interpretive institutionalism in the analysis of judicial politics. *Law & Courts*, (Winter): 6-10.
- Glaberson, W. (2000). Fierce campaigns signal a new era for state courts. *New York Times*, June 5.
- Glick, H.R. (1991). The right to die: State policy making and the elderly. *Journal of Aging Studies*, 5 (Fall): 283-307.
- Glick, H.R. & Emmert, C.F. (1987). Selection systems and judicial characteristics: The recruitment of State Supreme Court judges. *Judicature*, 70: 228.
- Glick, H.R. & Hays, S.P. (1991). Innovation and reinvention in state policymaking: Theory and the evolution of living will laws. *Journal of Politics*, 53(3): 835-850.
- Glick, H. R., & Vines, K. N. (1973). *State court systems*. Englewood Cliffs, NJ: Prentice-Hall.
- Gray, V. (1973). Innovation in the States: A diffusion study. *American Political Science Review*, 67: 1174-85.
- Haider-Markel, D.P. (2001). Policy diffusion as a geographical expansion of the scope of political conflict: Same-sex marriage bans in the 1990s. *State Politics and Policy Quarterly*, 1(1): 5-26.
- Haider-Markel, D. P. & O'Brien, S. (1997). Creating a "well-regulated militia": Policy responses to paramilitary groups in the American states. *Political Research Quarterly*, 50(3): 551-565.
- Hall, D.J. Tobin, R.W., & Pankey, K.G., Jr. (2004). Balancing judicial independent and fiscal accountability in times of economic crisis. *American Bar Association: Judge's Journal*, 43(3): 5-9.
- Hall, K. (1984). Progressive reform and the decline of democratic accountability: The popular election of state supreme court judges, 1850-1920. *American Bar Foundation Research Journal*, 345.
- Hall, M.G. (1985). Docket control as an influence on judicial voting. *Justice System Journal*, 10 (Summer): 243-55.
- (1987). Constituent influence in state supreme courts: Conceptual notes and a case study. *Journal of Politics*, 49 (November): 1114-21.

- (1990). Opinion assignment procedures and conference practices in state supreme courts. *Judicature*, 73 (December-January): 209-14.
- (1992). Electoral politics and strategic voting in state supreme courts. *Journal of Politics*, 54 (May): 427-46.
- (1995). Justices as representatives: elections and judicial politics in the American States. *American Politics Quarterly*, 23 (October): 485-503.
- Hall, K. (1984). Progressive reform and the decline of democratic accountability: The popular election of state supreme court judges, 1850-1920. *American Bar Association Foundation Research Journal*, 2: 345.
- Hall, M.G. & Brace, P.K. (1989). Order in the courts: A neo-institutional approach to judicial consensus. *Western Political Quarterly*, 42 (September): 391-407.
- Hamilton, A. (2003). No. 78: The judiciary department. In C. Rossiter (Ed.), *The Federalist Papers* (pp. 463-473). New York: Signet Classic.
- Hanssen, A.F. (2004). Is there a politically optimal level of judicial independence? *American Economic Review*, 94 (June): 712-29.
- Hartley, R.E. & Bates, K.B. (2006). Meeting the challenge of educating court managers. *Judicature*, 90 (September-October): 81-88.
- Hartness, E. (2008). Gang affiliation debated in slaying of UNC student. *WRAL.com*. March 11, 2008. Retrieved from <http://www.wral.com/news/local/story/2560679/>.
- Hartness, E., Chou, R., & Gravely, J. (2008). Slain UNC student "embraced the world". *WRAL.com*. March 7, 2008. Retrieved on March 18, 2008 from <http://www.wral.com/news/local/story/2538454/>.
- Hays, S.W. & Douglas, J.W. (2006). Judicial administration: Modernizing the third branch. In Miller, G.J., Rabin, J., & Hildreth W. B. (Eds.), *Handbook of Public Administration*, 3rd ed. New York: Taylor-Francis.
- Henschen, B.M., Moog, B., & Davis, S. (1990). Judicial nominating commissioners: A national profile. *Judicature*, 73: 328-334.
- Hoffman, R.B. (1991). Beyond the team: Renegotiating the judge-administrator partnership. *The Justice System Journal*, 15(2): 652-666.

- Hojnacki, M. & Baum, L. (1992). Choosing judicial candidates: How voters explain their decisions. *Judicature* (April-May): 300-09.
- Hoyman, M.M. (1997). *Power steering: Global automakers and the transformation of rural communities*. Lawrence, KS: University Press of Kansas.
- Hoyman, M. M. & Weinberg, M. (2006). The process of policy innovation: Prison sitings in rural North Carolina. *Policy Studies Journal* 34(1): 95-112.
- Hudzik, J.K. (1991). Voices from a decade ago: The first national symposium on court management. *The Justice System Journal*, 15(2): 563-579.
- Huff, D.L., Lutz, J.M., and Srivastava, R. (1988). A geographical analysis of the innovativeness of states. *Economic Geography*, 64(1): 137-146.
- Jacob, H. (1964). Te effect of institutional differences in the recruitment process: The case of state judges. *Journal of Public Law*, 13: 104.
- Jacobs, D., & Carmichael, J.T. (2001). The politics of punishment across time and space. *Social Forces*, 80(1): 61-89.
- Jaros, D. & Canon, B.C. (1971). Dissent on state supreme courts: The differential significance of characteristics of judges. *Midwest Journal of Political Science*, 15 (May): 322-46.
- John v. Orth*, 70 N.C. L. Rev. 1825.
- Lamb, A. (2008, March 17). Bill would stiffen penalties for gang-related crimes. *WRAL.com*. Retrieved on March 18, 2008 from <http://www.wral.com/news/local/story/2591060/>.
- Kamar, E. (1998). Indeterminacy in Delaware corporate law. 98 *Columbia Law Review* 1908.
- Kansas House Judiciary Committee. (2006). *Minutes of the House Judiciary Committee, January 24, 2006*. Topeka, Kansas.
- Kearney, R.C. (1999). Judicial performance evaluation in the states. *Public Administration Quarterly*, 22(4): 468-89.
- Kearney, R.C. & Paynter, S.R. (2007). Who watches the watchmen? Evaluating judicial performance in the American states. *Manuscript submitted for publication*.

- Kearney, R.C. & Sheehan, R.S. (1992). Supreme Court decision-making: The impact of court composition on state and local government litigation. *The Journal of Politics*, 54(4): 1008-1025.
- Kerr, S. (1975). On the folly of rewarding A, while hoping for B. *Academy of Management Journal*, 18: 769-783.
- Kingdon, J.W. (1995). *Agendas, Alternatives, and Public Policies*, 2nd ed. New York: HarperCollins.
- Kiser, L.L. & Ostrom, E. (1982). The three worlds of action: A metatheoretical synthesis of institutional approaches. In Elinor Ostrom, ed., *Strategies of Political Inquiry*, pp. 179-222. Beverly Hills, CA: Sage.
- Kozinski, A. (1997). What I ate for Breakfast and other mysteries of judicial decision making. In David O'Brien, ed., *Judges on Judging*, Chatham: Chatham House.
- Lee, E.T. (1992). *Statistical methods for survival data analysis* (2nd ed.). New York: Wiley.
- Levenson, Michael. (2007, November 24). Romney calls for judge to resign: Tuttmann released killer without bail [Electronic version]. *The Boston Globe*.
- Levy, P. E., & Williams, J. R. (1998). The role of perceived system knowledge in predicting appraisal reactions, job satisfaction, and organizational commitment. *Journal of Organizational Behavior*, 19(1): 53-65.
- Lewis, N.A. (2002). Gifts in state judicial races are up sharply. *New York Times*, February 14.
- Lovrich, N. P., Jr., & Sheldon, C.H. (1984). Voters in judicial elections: An attentive public or an uninformed electorate. *Justice System Journal*, 9(1): 23-39.
- (1985). Assessing judicial elections: Effects upon the electorate of high and low articulation systems. *Western Political Quarterly*, 38 (June): 276-93.
- Lushkin, R.C. (1987). Measuring political sophistication. *American Journal of Political Science*, 31(4): 856-899.
- Lutz, J.M. (1997). Regional leaders in the diffusion of tort innovations among the American states. *Publius: the Journal of Federalism*, 27(1): 39-58.

- Lynn, S.M. (n.d.). Personal communication
- MacManus, S.A. & Grothe, B.P. (1989). Fiscal stress as a stimulant to better revenue forecasting and productivity. *Public Productivity Review*, 12(4): 387-400.
- Mahajan, V. & Peterson, R.A. (1985). *Models for innovation diffusion*. Beverly Hills, CA: Sage.
- March, J. & Olsen, J. (1984). The new institutionalism: Organizational factors in political life. *American Political Science Review*, 73(3): 734-49.
- Martin, J. (1993). Merit selection commissions: What do they do? How effective are they? *Unpublished manuscript*.
- Mason, C. (2005). *Cox proportional hazard models*. Retrieved October 22, 2007, from the University of California-Berkeley, Department of Demography, Web site: <http://www.demog.berkeley.edu/213/Week14/welcome.pdf>.
- Meier, K.J. (2004). Get your tongue out of my mouth 'cause I'm kissin' you goodbye: The politics of ideas. *Policy Studies Journal*, 32(2): 225-233.
- Miller, R.G. (1981). *Survival analysis*: New York: Wiley.
- Miller, G.J. (2005). The political evolution of principal-agent models. *Annual Review of Political Science*, 8 (June): 203-225.
- Mintrom, M. (1997). Policy entrepreneurs and the diffusion of innovation. *American Journal of Political Science*. 41: 738-770.
- (2000). *Policy entrepreneurs and school choice*. Washington, DC: Georgetown University Press.
- Mintrom, M. & Vergari, S. (1998). Policy networks and innovation diffusion: The case of state education reforms. *Journal of Politics*, 60: 126-48.
- Mitnick, B.M. (1982). Regulation and agency theory. *Policy Studies Review*, 1(3): 442-453.
- Moe, T. (1984). The new economics of organization. *American Journal of Political Science*. 28: 739-77.
- . (1990a). Political institutions: The neglected side of the story. *Journal of Law, Economics, and Organizations*, 6(1): 213-253.

- . (1990b). The politics of structural choice: toward a theory of public bureaucracy. In Oliver Williamson, ed., *Organization Theory: From Chester Barnard to the Present and Beyond*. New York: Oxford University Press.
- Mohr, L. (1969). Determinants of innovation in organizations. *American Political Science Review*, 63: 111-126.
- Molski v. Evergreen Dynasty Corp*, 2007 U.S. App. (2007).
- Mooney, C.Z. & Lee, M.H. (1995). Legislative morality in the American states: The case of pre-Roe abortion regulation reform. *American Journal of Political Science*, 39(3): 599-627.
- Moore, M. (1995). *Creating public value*. Cambridge, MA: Harvard University Press.
- Mort, P. R. (1953). Educational Adaptability. *School Executive*. 71: 1-23.
- Moynihan, D.P. & Ingraham, P.W. (2004). Integrative leadership in the public sector: A model of performance-information use. *Administration & Society*, 36(4): 427-453.
- Murphy v. United Parcel Service*, 527 U.S. 516, 520 (1999).
- Murphy, K. R., & Cleveland, J. N. 1995. *Understanding performance appraisal: Social, organizational, and goalbased perspectives*. Thousand Oaks, CA: Sage.
- Neubauer, D. (1978). Judicial role and case management. *Justice System Journal*, 4:223.
- Nicholson-Crotty, S. (2004). Goal conflict and fund diversion in federal grants to the States. *American Journal of Political Science*, 48(1): 110-122.
- O'Sullivan, E.A., Rassel, G. R., & Berner, M.M. (2003). *Research methods for public administrators, 4th edition*. New York: Addison Wesley Longman, Inc.
- Okin, J. (2001). Has the Supreme Court gone too far? An analysis of *University of Alabama v. Garrett* and its impact on people with disabilities. *Journal of Gender, Social Policy, and the Law*, 9(3): 663:694.
- Osborne, D. & Gaebler, T. (1992). *Reinventing government*. Reading, MA: Addison-Wesley.
- Ostrom, E. (1986). An agenda for the study of institutions. *Public Choice*, 48: 3-25.
- . (1990). *Governing the Commons*. New York: Cambridge University Press.

- Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206, 210 (1998).
- Phillips, T. R. (2002). When money talks, the judiciary must balk. *Washington Post*, April 14.
- Poister, T.H. & McGowan, R.P. (1984). The contribution of local productivity improvement efforts in a period of fiscal stress. *Public Productivity Review*, 8(4): 386-394.
- Pound, R. (1937). The causes of popular dissatisfaction with the administration of justice. *American Judicature Society*, 20: 178.
- Premchand, A. (1981). Government budget reforms: Agenda for the 1980s. *Public Budgeting & Finance*, 2(3): 16-24.
- Prentice, R.L. & Farewell, B.T. (1986). Relative risk and odds ratio regression. *Annual Review of Public Health*, 7: 335-338.
- Pritchett, C.H. (1948). *The Roosevelt Court: a study in judicial politics and values, 1937-1947*. New York: Macmillan Co.
- Radin, B.A. (2000). The Government Performance and Results Act and the tradition of federal management reform: Square pegs in round holes. *Journal of Public Administration and Research Theory*, 10(1): 111-135.
- Rainey, H.G. & Steinbauer, P. (1999). Galloping elephants: Developing elements of a theory of effective government organizations. *Journal of Public Administration and Research Theory*, 9(1): 1-32.
- Raymond, L. (2006). Cooperation without trust: Overcoming collective action barriers to endangered species protection. *Policy Studies Journal*, 34(1): 37-57.
- Reddick, Malia. (2002). Merit selection: A review of the social scientific literature. 106 *Dickinson Law Review*, 729.
- Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).
- Roberts, G.E. 1992. Linkages between performance appraisal system effectiveness and rater and ratee acceptance. *Review of Public Personnel Administration*. 5(12): 19-41.
- . 1995. Development performance appraisal in municipal government: An antidote for a deadly disease? *Review of Public Personnel Administration*. 15(7): 17-43.

- Roberts, S. (2000). Justice goes awry in Tennessee. *The Masthead*. Winter issue. Retrieved on August 10, 2007 from http://findarticles.com/p/articles/mi_qa3771/is_200001/ai_n8900826 .
- Rogers, E. M. (2003). *Diffusion of innovations*, 5th ed. New York: Free Press.
- Romano, R. (2006). The states as a laboratory: Legal innovation and state competition for corporate charters. *Yale Journal on Regulation*, 23: 209-246.
- Rosenbloom, D.H. (1987). Public administrators and the judiciary: The “new partnership”. *Public Administration Review*, 47(1): 75-83.
- . (1989). Rosenbloom on the Court’s employment discrimination opinions. *Public Administration Review*, 49(3): 292-293.
- . (2000). Retrofitting the administrative state to the Constitution: Congress and the judiciary’s Twentieth century progress. *Public Administration Review*, 60(1): 39-46.
- Rosenbloom, D.H. & Ross, B.H. (1998). Toward a new jurisprudence of constitutional federalism. *American Review of Public Administration*, 28(2): 107-125.
- Rottman, D.B. & Strickland, S.M. (2004). *State court organization 2004*. U.S. Department of Justice, Bureau of Justice Statistics, Washington, D.C. USGPO.
- Rottman, J.W., Smith, L.D., Long, D.A., and Crofts, C. (2007). Implementing judicial management systems within an integrated justice information framework: A case study on information systems development in the public sector. *The American Review of Public Administration*, 37(4): 436-457.
- Rubin, I. (2005). The state of state budget research. *Public Budgeting & Finance*, Silver Anniversary Edition: 46-67.
- Ryan, B. & Gross, N. C. (1943). The diffusion of hybrid seed corn in two Iowa communities. *Rural Sociology*. 8: 15-24.
- Sabatier, P. (1987). Knowledge, policy-oriented learning, and policy change. *Knowledge* 8, june: 649-692.
- .(1988). An advocacy coalition framework of policy change and the role of policy-oriented learning therein. *Policy Sciences* 21: 129-68.

- Sabatier, P. & Jenkins-Smith, H. (1993). The advocacy coalition framework: Assessment, revisions, and implications for scholars and practitioners. In Paul Sabatier and Hank Jenkins-Smith, eds., *Policy Change and Learning: An Advocacy Coalition Approach*. Boulder, CO: Westview.
- Schattschneider, E.E. (1960). *The Semi-Sovereign People*. New York: Holt, Rinehart, and Wilson.
- Scheps, P.B. (2000). Linking performance measures to resources allocations. *Government Finance Review*, June: 11-15.
- Schneider, R. & Maughan, R. (1979). Does the appointment of judges lead to a more conservative bench? The case of California. *Justice System Journal*, 5: 45-57.
- Scott, W.R. (1995) *Institutions and Organizations*. Thousand Oaks: Sage Publications.
- Segal, J.A. & Spaeth, H.J. (1993). *The Supreme Court and the attitudinal model*. Cambridge, MA: Cambridge University Press.
- Seis, D.E. (1982). Selecting judges in the States: A brief history and analysis. *Northern Kentucky Law Review*, 9: 459.
- Sheldon, C.H. (1994). The role of state bar associations in judicial selection. *Judicature*, 77: 300-305.
- Sheldon, C.H. and Lovrich, N.P., Jr. (1982). Judicial accountability vs. responsibility: balancing the views of the voters and judges. *Judicature*, 65: 470.
- . (1983). Knowledge and judicial voting: the Oregon and Washington experience. *Judicature*, 67: 234.
- Singer, J.D. & Willet, J.B. (2003). *Applied longitudinal data analysis: Modeling change and event occurrence*. New York: Oxford University Press.
- Slotnick, E. E. (1977). Who speaks for the court: the View from the states. *Emory Law Journal*, 26(1): 107-47.
- (1988). Review essay on judicial recruitment and selection. *The Justice System Journal*, 13(1): 109-124.
- Smith v. Van Gorkhom*, 488 A.2d 858 (Del. 1985).

- Smith, K. (2008). Police seek name, story for woman found slain near UNC. *WRAL.com*. March 6, 2008. Retrieved on March 18, 2008 from <http://www.wral.com/news/local/story/2531791/>.
- Songer, D.R. & Tabrizi, S.J. (1999). The religious right in court: the Decision-making of Christian evangelicals in state supreme courts. *Journal of Politics*, 61 (May): 507-26.
- Sosin, J.D. (2000). Ausonius' Juvenal and the Winstedt fragment. *Classical Philology*, 95(2): 199-206.
- Spence, M. & Zeckhauser, R. (1971). Insurance, information, and individual action. *American Economics Review*, 61(2): 380-87.
- Squire, P. (1988). Career opportunities and membership stability in legislatures. *Legislative Studies Quarterly*, 13(1): 65-82.
- (1992). Legislative professionalization and membership diversity in state legislatures. *Legislative Studies Quarterly*, 17(1): 69-79.
- (1997). Another look at legislative professionalization and divided government in the States. *Legislative Studies Quarterly*, 22(3): 417-432.
- (2001). Professionalization and public opinion of state legislatures. *The Journal of Politics*, 55(2): 479-91.
- (2007a). Professionalization of state courts of last resort. A paper prepared for the 7th Annual Conference on State Politics and State Policy, Austin, Texas.
- (2007b). Measuring state legislative professionalism: the Squire Index revisited. *State Politics and Policy Quarterly*, 7(2): 211-227.
- Strang, D. & Meyer, J.W. (1993). Institutional conditions for diffusion. *Theory and Society*, 22(4): 487-511.
- Stimson, J.A. (1991). *Public opinion in America: Moods, cycles, and swings*. Boulder, CO: Westview Press.
- Stonecash, J. (1995). Review: *Statehouse Democracy- Public Opinion and Policy in the American States*. *American Political Science Review*, 89 (1): 200-201.
- Stott, E.K., Jr. (1982). The judicial executive: Toward greater congruence in an emerging profession. *The Justice System Journal*, 7: 152-169.

- Stupak, R. (1991). Court leadership in transition: Fast forward toward the year 2000. *Justice System Journal*, 15: 617- 627.
- Sutton v. United Airlines*, 527 U.S. 471, 482-83 (1999).
- Swatzwelder, J. & Reardon, J. (1994). Homer the vigilante. In M. Groening and J.L. Brooks, *The Simpsons*. Hollywood, CA: Twentieth Century Fox.
- Tabachnick, B. G. & Fidell, L. S. (2001). *Using Multivariate Statistics*. Fourth Edition. Boston: Allyn and Bacon.
- Tarr, G.A. (1977). *Judicial Impact and State Supreme Courts*. Lexington, MA: D.C. Heath.
- Taylor, J. (2007). Transgender identities and public policy in the United States: The relevance for public administration. *Administration & Society*, 39(7), 833-856
- Terry, L.D. (2002). *Leadership of Public Bureaucracies: The Administrator as Conservator*, 2nd ed. Armonk, NY: M.E. Sharpe.
- Tobin, R.W. (1996). *Funding the state courts: issues and approaches*. Williamsburg, VA: National Center for State Courts.
- Tobin, R.W. & Pankey, K.G., Jr. (1994). *Managing Budget Cutbacks*. Williamsburg, VA: National Center for State Courts.
- Traut, C.A. & Emmert, C.F. (1998). Expanding the integrated model of judicial decision making: the California justices and capital punishment. *Journal of Politics*, 60 (November): 1166-1180.
- U.S. Courts (2007). Comparing federal and state court systems. Retrieved on October 22, 2007 from <http://www.uscourts.gov/outreach/resources/federalstate.htm>.
- Ungs, T.D. & Bass, L.R. (1972). Judicial role perceptions: A Q-Technique study of Ohio judges. *Law & Society*, 6, Rev. 343.
- Valente, T.W. & Davis, R.L. (1999). Accelerating the diffusion of innovations using opinion leaders. *The ANNALS of the American Academy of Political and Social Science*, 566(2): 55-67.
- Veblen, T. B. (1909). The limitations of marginal utility. *Journal of Political Economy*, 17: 235-245.

- . (1934). *The Theory of the Leisure Class*. New York: Modern Library.
- Volcansek, M.L. (1982). The effects of judicial-selection reform: What we know and what we do not. *The Analysis of Judicial Reform*. Philip L. Dubois, ed.. Lexington, Mass: Lexington Books.
- Waldman, D.A, Atwater, L.E., & Antonioni, D. (1998). Has 360 degree feedback gone amok? *Academy of Management Executive*, 12(2): 86-96.
- Ware, S. J. (2001). Money, politics, and judicial decisions: a case study of arbitration law in Alabama. *Journal of Law and Politics*, 25: 645.
- Weber, M. (1968). *Economy and Society: An Interpretive Sociology*. 3 vols. Edited by Guenther Roth and Claus Wittich. New York: Bedminster. (Original work published in 1924).
- Wellin, E. (1955). Water boiling in a Peruvian town. In Benjamin D. Paul, ed., *Health, Culture, and Community*. New York: Russell Sage Foundation.
- White, G.E. (1976). *The American Judicial Tradition*. New York: Oxford University Press.
- Williams v. Lee*, 358 U.S. 217, 1958.
- Winstedt, E.O. (1899). A Bodleian MS. of Juvenal. *The Classical Review*, 13(4): 201-205.
- Winters, G.B. (1968). The merit plan for judicial selection and tenure – its historical development. *Duquesne Law Review*, 7: 61-78.
- Wise, C.R. (1998). Judicial federalism: the Resurgence of the Supreme Court's role in the protection of state sovereignty. *Public Administration Review*, 58(2): 95-8.
- (2001). The Supreme Court's new constitutional federalism: Implications for public administration. *Public Administration Review*, 61(3): 343-358.
- Wise, C.R. & O'Leary, R. (1992). Is federalism dead or alive in the Supreme Court? Implications for public administrators. *Public Administration Review*, 52(6): 559-71.
- (1997). Intergovernmental relations and federalism in environmental management and policy: the Role of the courts. *Public Administration Review*, 57(6): 150-9.

- Wissler, C. (1914). The influence of the horse in the development of Plains culture. *American Anthropologist*, 16: 1-25.
- (1923). *Man and Culture*. New York: Thomas Y. Crowell.
- Wittman, D.A., ed. (2002). *Economic analysis of the law: Selected readings*. New York: Wiley-Blackwell Publishing.
- Wohl, A. (2000). Justice for rent: the scandal of judicial campaign finance. *American Prospect*, May 22.
- Wong, K.W. & Langevin, W.E. (2006). Policy expansion of school choice in the American states. Electronic working paper retrieved on July 18, 2008 from <http://www.vanderbilt.edu/schoolchoice/>. Research supported by National Center on School Choice.

APPENDICES

- Appendix A: Court Jurisdiction
- Appendix B: Types of Courts Systems
- Appendix C: Native American Courts
- Appendix D: Interview Notes
- Appendix E: Statistical Results
- Appendix F: Random Samples of Clustered States

Appendix A: Court Jurisdiction

Table A-1: Examples of Federal and State Court Jurisdiction

State Courts	Federal Courts	State or Federal Courts
Crimes under state legislation	Crimes under statutes enacted by Congress	Crimes punishable under both federal or state law
State constitutional issues and cases involving state laws or regulations	Most cases involving federal laws or regulations (e.g., tax, Social Security, broadcasting, civil rights)	Federal constitutional issues
Family law issues	Matters involving interstate and international commerce including airline and railroad regulation	Certain civil rights claims
Real property issues	Cases involving securities and commodities regulation, including takeovers of publicly held corporations	“Class action” claims
Landlord and tenant disputes	Admiralty cases	Environmental regulations
Most private contract disputes (except those resolved under bankruptcy law)	International trade matters	Certain disputes involving federal law
Most personal injury lawsuits	Patent, copyright, and other intellectual property issues	
Most professional malpractice issues	Cases involving rights under treaties, foreign states, and foreign nationals	
Most issues involving the internal governance of business associations such as partnerships and corporations	State law disputes when “diversity of citizenship” exists	
Most workers’ injury claims	Bankruptcy matters	
Probate and inheritance matters	Disputes between states	
Most traffic violations and registration of motor vehicles	Habeas corpus actions	
	Traffic violations and misdemeanors occurring on federal property	

Source: U.S. Courts, Administrative Office of the Courts

Appendix B: Types of Court Systems

Federal Courts

Courts in the United States are either part of the federal judiciary or of one of the 50 state judiciaries, though not both. This dissertation is only about diffusion of policies between state governments and state courts. Federal courts are described briefly but neither these courts nor their impacts are considered as a part of my analysis.

There are three types of federal courts including the Supreme Court, appellate courts, and trial courts. Trial courts, of which there are 94, operate in 12 regional judicial circuits across the country. Each state has at least one federal judicial district including a U.S. bankruptcy court. All legal cases heard in federal court are one of two types. In the first, cases involve matters with “federal questions” where controversies between states, federal law, or the U.S. Constitution are involved. The other type of federal case involves “diversity of citizenship” where litigants are residents of different U.S. states or one party is a U.S. citizen and the other of a foreign land. An appellate court is located in each circuit to hear appeals from district courts. Finally, the U.S. Supreme Court is the highest in the land and hears only cases involving important questions about the U.S. Constitution or federal law.

There is a unified structure and organizational system for federal courts (Administrative Office of the Courts, 2003). The Judicial Conference of the United States is the national policy making body for the federal judiciary. The Chief Justice of the Supreme Court presides over the Judicial Conference and works with the 26 members of

this group to recommend national policies and legislation for judicial administration, handle court budget requests, create rules of practice and procedure, tend to court administration, personnel matters, and case management (Administrative Office of the Courts, 2003).

Federal courts have the same administrative structure and rules of procedure across districts and levels. Appropriations for federal court operations are made as a part of the annual budget for the United States. Given the homogeneity in procedures and operations, federal courts across the 94 districts are very similar.

For these reasons, administrative programs at the federal court level, including JPE, are not appropriate for policy diffusion studies unless we were to consider a vertical influence model where the High Court prescribed some rule or case law for lower courts; however, even these kinds of policy adoptions would be less enlightening than other avenues for diffusion study. Without variance in political or administrative structure, organizational management practices in federal courts are likely to be much more similar than those in states courts.

Appendix C: Native American Courts

Discussions of American courts typically involve cases heard in either federal or state courts. However, Native American tribes have tribal courts as well. The United States government recognizes sovereignty of Indian nations to “make their own laws and to be ruled by them” (*Williams v. Lee*, 1958). In America today there are 560 federally recognized tribes that use a combination of traditional methods (by tribal consensus) and formal court systems (National Tribal Justice Resource Center, 2007). Native American courts were established in the 1880s after two members of the Lakota tribe, Crow Dog and Spotted Tail, fought over land. The matter ended when Crow Dog killed Spotted Tail; though the tribe handed down a punishment based on cultural norms, the federal government was unsatisfied with its severity. As a result, the Department of the Interior created the Court of Indian Offenses (National Tribal Justice Resource Center, 2007).

However, even now, all tribes have not enacted formal tribal court systems. Only 275 tribes have done so; the remainder resort to traditional means of dispute resolution.

Two especially important issues relative to Native American courts are:

- 1) Any action brought by a tribe (and not an individual Indian) is under federal court jurisdiction presumably the state where the tribe is located;
- 2) There are several states with jurisdiction over civil actions by Indians arising on Indian land. These states are Alaska, California, Nebraska, and Wisconsin. Oregon has jurisdiction over everywhere but Warm Springs and Minnesota has jurisdiction over everywhere except Red Lake. These states entered agreements with these tribes in order to gain this authority (and this is also why those areas were not included in Oregon and Minnesota because the tribes did not agree). (See §28 U.S.C. 1360.)

Practices of tribal courts vary widely. All fall under the provisions found in §18 U.S.C. 1152 describing the court system, appeals process (if there is one), and how tribal courts interact with American state and federal courts. Three considerations are made each time a tribe decides to develop a justice system. Those considerations, as provided by the National Tribal Justice Resource Center are: 1) is the native system effective in reaching prompt, long-term resolutions; 2) does the native system ensure the safety and well-being of the community by preventing crime; and, 3) does the native justice system inspire confidence in its ability to the tribal community and the outside American society?

Though the tribal law is a specialization within the American legal system, most courts fall outside its jurisdiction. The remainder of this discussion returns to traditional judicial systems in American federal and state government.

Appendix D: Interview Notes

D-1 Interview with Neal Ellis

Contact Information

L. Neal Ellis (Chair, Administration of Justice Committee, NC Bar Association)
nellis@hunton.com
Hunton & Williams LLP
421 Fayetteville Street
Suite 1400
Raleigh, NC 27601

Personal interview, December 30, 2006

Paynter: What is the history of the JPE project/movement in NC? *Specifically, how did the issue get on the bar assns' policy agenda? Why? Is there a lack of confidence (public, or bar assn) in the present procedures for investigating complaints against judges, or a perception of judicial unfairness?

Ellis: NCBA wants the best judges possible. There isn't a crisis in the sense that we have "awful" judges; in fact, NC judges are good. But the Bar wants the best possible judges we can have and thought that JPE would be a way to get to that. If you look at the literature, states that have JPE love it (cites DU report). There's an initial hurdle to overcome with people that don't want to be evaluated. Need sort of a top down approach to get buy in. In NC, in October 2006, the conference of superior court judges passed a resolution strongly favoring JPE. That was an important step.

Two years ago the president of the NCBA asked Mr. Ellis and his committee (Administration of Justice Committee) to evaluate JPE in NC. The committee did that and recommended that the bar move forward with JPE. They have been at this stage for a year and have the obligation to produce a report soon. The report is in rudimentary stages and is due to the Board of Governors in late February/early March. The BOG and NCBA leadership are looking for direction from the report on whether to implement JPE in NC or not.

Paynter: Who are the key contacts involved in this project? Who else should we talk to?

Ellis:

National contacts

David Brody, University of Washington

Suzanne Fulton, State of Virginia – 804.786.6455

Judge Cheryl Cesario – State of Illinois, worked on the ABA guidelines on JPE revision in summer 2005

North Carolina Contacts:

Chief Justice Sarah Parker

Clark Smith, president of NCBA

Judge John Jolley

Judge Rick Doughton

Judge Kim Taylor

Judge Chris Anderson

Paynter: What sorts of recommendations (if any) would the NCBA make to the General Assembly about pursuing a JPE program? Where does the project/proposal stand now? What is its schedule? Will a bill be introduced next legislative session? Is there legislative support for JPE? What about opposition?

Ellis: They do not recommend a state mandated program. Because NC has contested elections, state funded JPE would be difficult to implement. So, the Bar wants an unmandated program. NCBA is going to recommend a pilot program using 4 judicial districts in NC. They want to use counties with different sizes and case loads –probably including a rural county (with fewer lawyers, judges, case) and move up the ladder to urban (Wake or Mecklenberg) with many lawyers and judges. They would like to start in Fall 2008 and move toward statewide implementation the next year. There is a NC statute on JPE that allows the state judicial council to conduct regular evaluation of judges. It was passed in 2000 but has never been executed by the SJC. The reason is that the judicial branch has insufficient funds to do it.

Paynter: What states might the program be modeled after? Who would the "appraisors" be? Is there anything in written form available?

Ellis: Virginia and federal JPE programs.

They haven't made a decision about who the appraisers should be. There is unanimity on the following groups: attorneys, jurors, court personnel, and a judicial self assessment. There is a debate about how far to extend the list of possible respondents; some don't like the idea of including law enforcement, social services workers, witnesses, and other court participants.

There are issues surrounding the mechanics of doing this – getting the surveys out and back, etc. There is a draft report that we can get access to soon.

See CD-R provided by Mr. Ellis and on file with the author.

Paynter: What kind(s) of developmental support would be necessary to design the program?

Ellis: They need someone to help with questionnaire development and with logistics of data collection, analysis, and a written report.

Paynter: Is the NCBA interested in evaluating the system or individual judges?

Ellis: Individual judges.

Paynter: Goal 2 of the NCBA report released in June 2006 is about “major court system reforms” and one of the targets listed as a way to achieve this goal is to “begin objective evaluations of judges”. The target seems to be designed toward creating a JPE program at the appellate level only. Is this a correct reading of this target? What other information can you provide me about this goal and target? *Which judges/courts would be part of the evaluation process? Why?

Ellis: Not only for appellate courts. This target was prompted by publicity from the superior court candidate during the election cycle this past year. One of the candidates who was running could have unseated a highly qualified judge.

Paynter: How does the State Judicial Council work? I mean, how is the review process initiated for individual judges? Is the Judicial Standards Commission a part of the SJC?

Ellis: The AOC has a case management evaluation system that tracks stats on productivity, management issues (dockets, dispositions, etc.).

Paynter: Does the debate on judicial appointment vs. election still continue?

Ellis: NCBA is in favor of moving away from elections and toward merit selection. The judges are too. They don’t like standing for election. Elections are detrimental to the concept of judicial independence. Proposals have been made to get away from elections but the General Assembly is resistant to this change. There was a report from NCCU Law (*Is Justice in Jeopardy? A symposium on Judicial Independence, April 7, 2006*) that dealt in part with issues of election and selection. You can get a good overview of the issues around election/selection from reports written by Judge Polander in Arizona and on JPE in Colorado.

D-2 Interview with Aaron Conklin

Contact information

Aaron J. Conklin
Assistant General Counsel
aaron.conklin@tscmail.state.tn.us
Administrative Office of the Courts
511 Union Street, Suite 600
Nashville, TN 37219

Email correspondence, July 30, 2007

Paynter: I am a doctoral student working on my dissertation research project which is an effort to better understand why some states choose to adopt a JPE program while others do not. As a part of my research I am also looking at JPE survey tools used by individual states. Could you help me access a blank, unanswered copy of the survey questions used by the Tennessee Judicial Evaluation Commission? If possible, I would really like to look at each respondent group that is queried about judges.

Conklin: Our state performs judicial evaluations for appellate judges only. We have four surveys for each group surveyed: trial judges, other appellate judges, attorneys (who have appeared before the appellate judge surveyed) and court personnel. I have attached copies of the surveys utilized in the most recent survey cycle.

Paynter: Could you help me access a blank, unanswered copy of the survey questions used by the Tennessee Judicial Evaluation Commission?

Conklin: Documents provided and on file with author.

- Court Employee Questionnaire
- Trial Judge Questionnaire
- Appellate Judge Questionnaire
- Attorney Questionnaire

D-3 Interview with Jane Howell

Contact Information

Jane B. Howell
Executive Director
jane.howell@judicial.state.co.us
Commission on Judicial Performance
1301 Pennsylvania St., Ste.300
Denver, CO 80203

Telephone interview, April 23, 2007

Paynter: I am interested in finding out more about the JPE process in Colorado.

Howell: See www.cojudicialperformance.com. Note: Howell had many comments about page specific information as she led me through the website. However, all the information she provided is included in the documents on the webpage. A print version of this is on file with the author.

Email correspondence, May 8, 2007

Paynter: I am attempting to find testimonials from judges in states that have JPE to understand if 1) JPE works and 2) whether judges like having the system. I am also interested in trying to understand the issues highlighted by judges going through evaluation processes. Does Colorado have this kind of information available or could you point me in the direction of materials might be helpful?

Howell: There really isn't a document per se. We do have materials on the judicial performance web site, including the statute, Rules Governing Commissions on Judicial Performance, and a fact sheet. –www.cojudicialperformance.com.

D-4 Interview with Larry Cohn, Executive Director Alaska Judicial Council

Contact information

Larry Cohn
Executive Director
lcohn@ajc.state.ak.us
Alaska Judicial Council
1029 West Third Avenue, Suite 201
Anchorage, Alaska 99501

Email correspondence, April 23, 2007

Paynter: I need information about each state that conducts JPE. I suspect that Alaska's process has been influential for the states that followed and, therefore, developing a full understanding of how you all do a JPE evaluation is important to my research. Could I have access to actual evaluation instrument that attorneys, guardians *ad litem*, other court personnel and other judges use. I would also like to have a copy of the questions that judges use for self-evaluation.

Is it possible that you could help me find these documents?

Cohn: We'd be glad to mail you sample copies of these materials. Feel free to call if you have any questions. (NOTE: On April 24, 2007 materials were mailed and electronic documents were also provided. Both are on file with the author.)

Email correspondence, May 5, 2007

Paynter: I am attempting to find testimonials from judges in states that have JPE to understand if 1) JPE works and 2) whether judges like having the system. I am also interested in trying to understand the issues highlighted by judges going through evaluation processes. Does Alaska have this kind of information available or could you point me in the direction of materials might be helpful?

Cohn: We don't really have testimonials from judges. Honestly, I don't think any judge particularly enjoys going through the retention process, but they all prefer it to the alternatives. Anecdotally, some acknowledge that the feedback helps them improve their judicial performance. This is particularly true for new judges. As far as evidence that the system works, you might want to review the results of our most recent retention election. The Council recommended against the retention of one of thirty-one judges on the ballot. The public followed the Council's recommendations. You might want to look at our 23rd biennial report that is on our website at www.ajc.state.ak.us re: our retention evaluation process and retention election history...see pages 6-8 and appendices F & G.

D-5 Interview with William Raftery, National Center for State Courts

Contact information

William E. Raftery
Court Research Analyst
wraftery@ncsc.dni.us
National Center for State Courts
Research Division
300 Newport Avenue
Williamsburg, VA 23185

Email correspondence, April 11, 2007

Paynter: I have been unable to find the dates for adoption of official JPE programs in several states. Those are Connecticut, Florida, Idaho, Illinois, Kansas, Massachusetts, Rhode Island, and Vermont. There are also states who have JPE sponsored by the bar association or some other group. I have found limited or no information on these programs or when they were adopted. Those states are Georgia, Kentucky, Maine, Missouri, Nebraska, Ohio, Pennsylvania, South Carolina, Texas, West Virginia, and Wyoming. What source(s) would you suggest for finding this information?

Raftery: You may simply have to start making calls to the state bars or Administrative Offices of the Courts or finding the statute or court rule authorizing/creating the JPE program and find out what day they were signed or promulgated.

Paynter: Diffusion studies look at organizational fiscal health. My hypothesis is that in states where fiscal wealth is greater, JPE adoption is more likely. I thought about using per capita court expenditures though this measure isn't exactly what I'm looking for. I need 32 years of data (from 1975 -2006) for this variable. The point here is to understand the economic conditions of the state and how those affect the judiciary, specifically in its ability to do JPE. Are there data that tell me at least what the state court expenditures per year were for each state from 1975 – 2006?

Raftery: Court expenditures are going to prove very difficult, especially in part of the time frame you are asking about (1975-1985). Prior to 1985, most states did not have unified budgeting, meaning the local courts received appropriations and expended money provided by the county/local government. As such, it is going to be impossible to track this down. Bob Tobin's book is I dare say *THE* source for information on this transition. Even to this day, there are whole types of courts whose expenditures are reported locally only. You may be better looking at appropriations bills passed by state legislatures, but again this will not give you the entire picture because some courts remained partially or completely locally funded.

Paynter: Is there a way to get data for each state for each year on caseload? Specifically, I'd like to know how many cases were heard in state courts (all levels) each year in order to create a measure of internal demand for service.

Raftery: State caseload can be found through the Court Statistics Project.
http://www.ncsconline.org/D_Research/csp/CSP_Main_Page.html Complete trial and appellate court CSP data can be obtained from the Inter-University Consortium for Political and Social Research – ICPSR <http://www.icpsr.umich.edu/> If you have more specific data questions about how to use the CSP, I can help with those.

Appendix E: Statistical Results

Table E-1. Missing Values Analysis

Variable	Missing	Frequency Missing	Non-missing	Frequency Non-missing
State	0	0	1550	100
State name	0	0	1550	100
Year	0	0	1550	100
JPE	0	0	1550	100
Count	0	0	1550	100
Voter participation	0	0	1550	100
Violent crime rate	0	0	1550	100
Property crime rate	0	0	1550	100
BRFH citizen ideology	0	0	1550	100
BRFH elite ideology	0	0	1550	100
Political party in charge	0	0	1550	100
State net	0	0	1550	100
Squire	0	0	1550	100
Appellate merit	0	0	1550	100
Trial merit	0	0	1550	100
Appellate appointment	0	0	1550	100
Trial appointment	0	0	1550	100
Appellate non-partisan	0	0	1550	100
Trial non-partisan	0	0	1550	100
Appellate partisan	0	0	1550	100
Trial partisan	0	0	1550	100
Border	0	0	1550	100
Capital miles	0	0	1550	100
High school	0	0	1550	100
Region	0	0	1550	100
Urban	0	0	1550	100
Voter participation	751	48	799	52
EWM party id	0	0	1550	100
EWM elite id	0	0	1550	100
General revenues	0	0	1550	100
General expenditures	0	0	1550	100
Appellate selection	0	0	1550	100
Trial selection	0	0	1550	100
Appellate retention	0	0	1550	100
Trial retention	0	0	1550	100
Population	0	0	1550	100

Source: Author's calculations

N=1550

Table E-2. Cross-tabulation of JPE Programs and Geographic Region (1976 -2006)

Region	Has JPE	Does not have JPE
New England	74	112
Mideast	19	136
Great Lakes	27	128
Plains	7	210
Southeast	22	350
Southwest	25	99
Rocky Mountain	47	108
Far West	48	138
Total	269	1281

Source: Author's calculations.

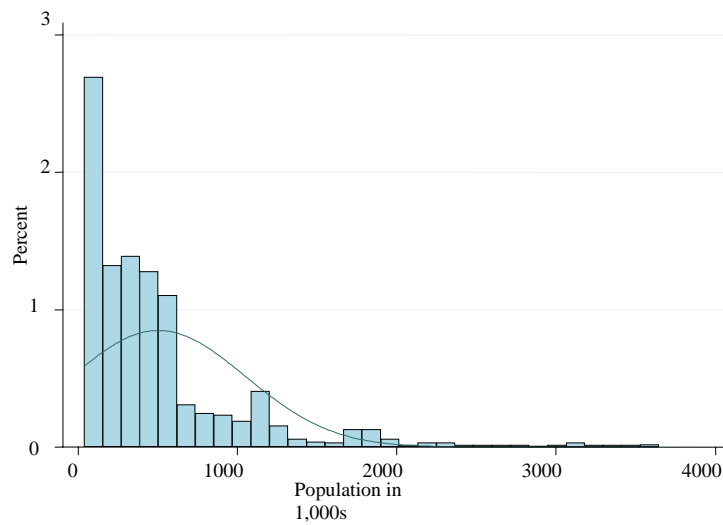


Figure E-1. State Population Histogram
Source: Author's Calculations

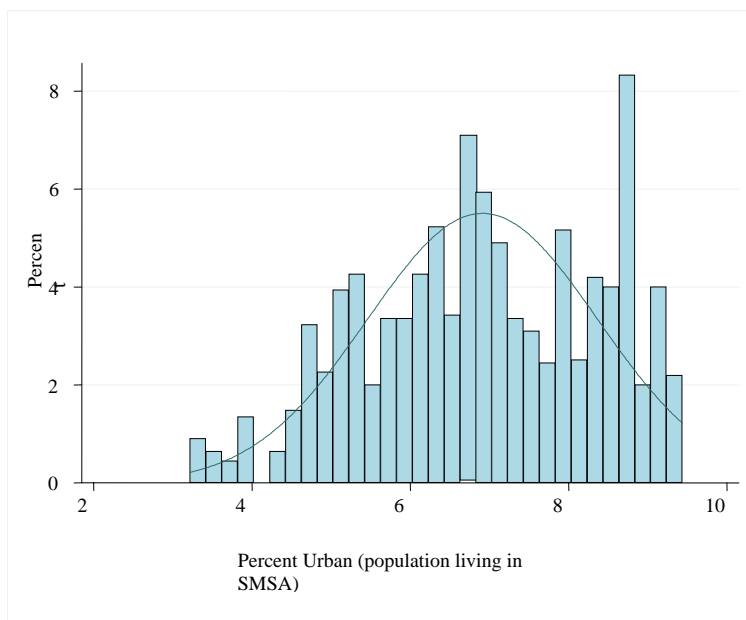


Figure E-2. Urbanization Histogram
Source: Author's calculations.

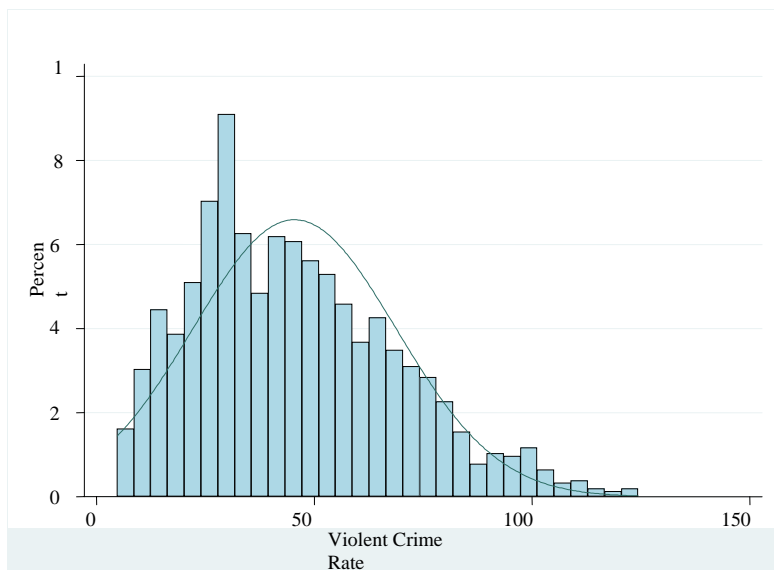


Figure E-3. Violent Crime Rate Histogram

Source: Author's calculations.

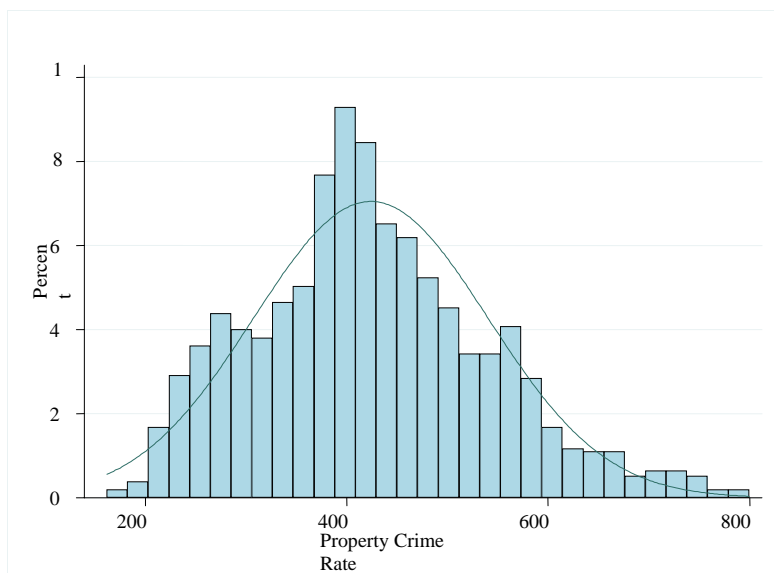


Figure E-4. Property Crime Rate Histogram

Source: Author's calculations.

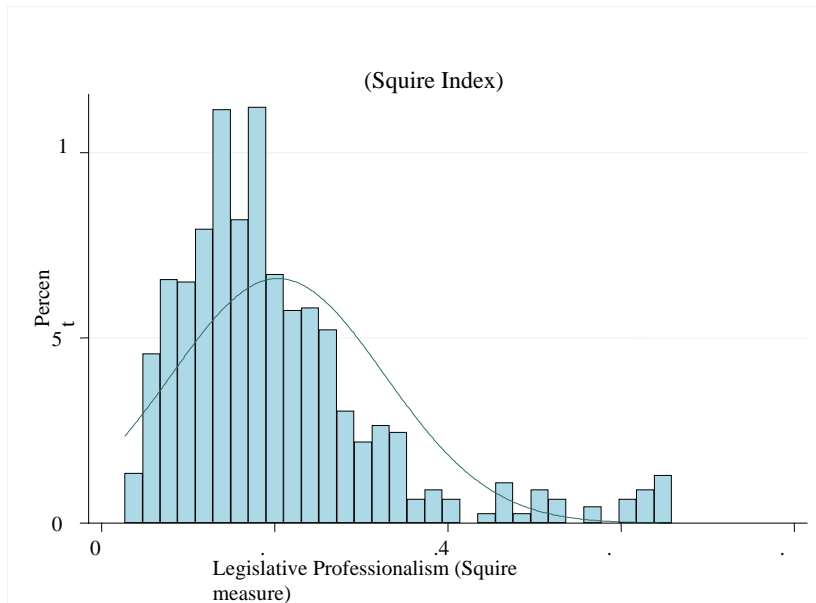


Figure E-5. Legislative Professionalism Histogram

Source: Author's calculations.

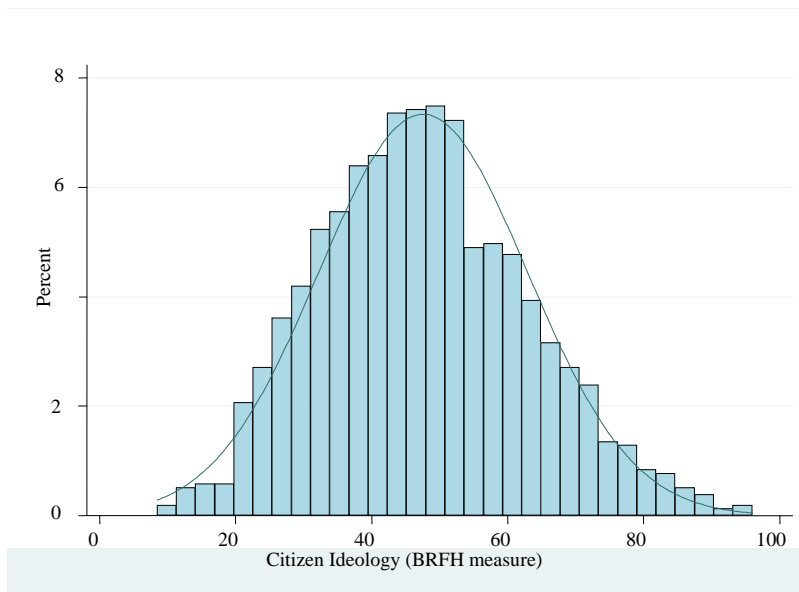


Figure E-6. BRFH Citizen Ideology Histogram

Source: Author's calculations.

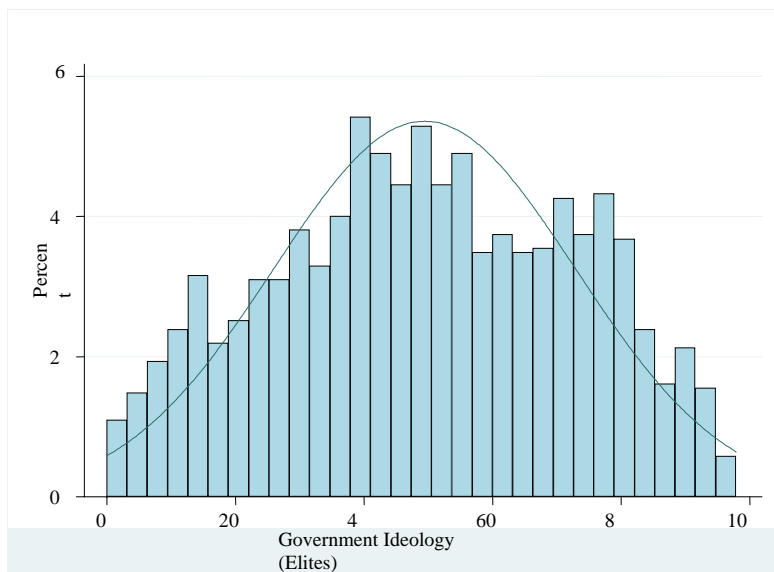


Figure E-7. BRFH Elite Ideology Histogram

Source: Author's calculations.

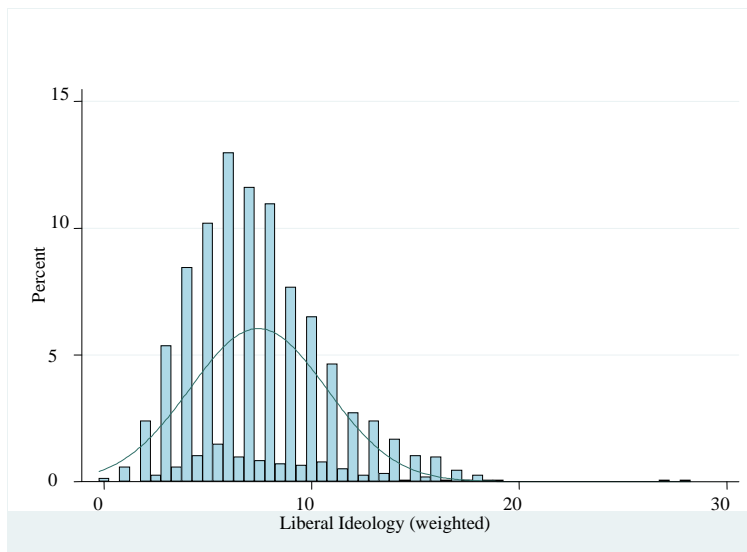


Figure E-8. EWM Elite Ideology Histogram

Source: Author's calculations.

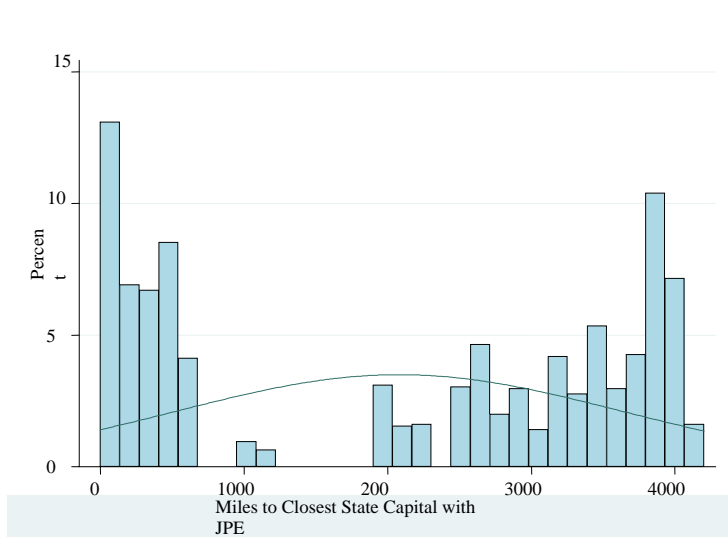


Figure E-9. Distance between JPE States Histogram
 Source: Author’s calculations.

Table E-3. Correlation of Citizen variables

	Voter participation	Violent crime rate	Property crime rate
Voter participation	1.00		
Violent crime rate	-0.02	1.00	
Property crime rate	0.02	0.59	1.00

Source: Author's calculations.
N=1,550

Table E-4. Correlation of Ideology Variables

Table V: Correlations between Resources/Obstacles Ideology Variables				
	EWM Party Ideology	BRFH Citizen Ideology	BRFH Elite Ideology	Political Party in Charge
EWM Party Ideology	1.00			
BRFH Citizen Ideology	-0.01	1.00		
BRFH Elite Ideology	-0.03	0.63	1.00	
Political Party in Charge	0.07	-0.06	-0.04	1.00

Source: Author's calculations.
N=1,550

Table E-5. Correlation of State Government Variables

	Net revenues – Expenditures	General revenues	General expenditures	Legislative professionalism
Net revenues – Expenditures	1.00			
General revenues	-0.09	1.00		
General expenditures	-0.15	0.99	1.00	
Legislative professionalism	-0.04	0.09	0.09	1.00

Source: Author's calculations.
N=1,550

Table E-6. Correlation of Types of Judicial Selection Systems

	AM	TM	AA	ANP	TNP	AP	TP	
Appellate Merit	1.00							
Trial Merit	0.73	1.00						
Appellate Appoint	0.60	0.44	1.00					
Trial Appoint	0.33	0.61	0.72	1.00				
Appellate Nonpartisan	-0.38	-0.27	-0.62	-0.45	1.00			
Trial Nonpartisan	-0.12	-0.33	-0.41	-0.54	0.81	1.00		
Appellate Partisan	-0.30	-0.22	-0.51	-0.37	-0.28	-0.33	1.00	
Trial Partisan	-0.16	-0.27	-0.33	-0.44	-0.33	-0.40	0.84	1.00

Source: Author's calculations.
N=1,550

Table E-7. Correlation of Geographic Variables

	Percent bordering states
Capital miles	-0.13

Source: Author's calculations.
N=1,550

Appendix F: Random Samples of Clustered States

Arkansas	Missouri
California	New Hampshire
Connecticut	New Mexico
Delaware	New York
Florida	North Carolina
Hawaii	North Dakota
Indiana	Pennsylvania
Kansas	Texas
Minnesota	Vermont
Mississippi	Wisconsin



Figure F-1. Random Sample 1

Source: Author

Alabama	Missouri
Arizona	Nebraska
Delaware	New Hampshire
Florida	New Mexico
Hawaii	North Carolina
Illinois	Ohio
Indiana	Oregon
Kansas	Utah
Massachusetts	Virginia
Minnesota	Wyoming



Figure F-2. Random Sample 2

Source: Author

Arizona	New York
Arkansas	North Carolina
Delaware	North Dakota
Florida	Ohio
Indiana	Pennsylvania
Massachusetts	South Carolina
Minnesota	Vermont
Mississippi	Virginia
Montana	West Virginia
Nebraska	Wisconsin



Figure F-3. Random Sample 3

Source: Author

Alabama	Missouri
Colorado	Nebraska
Connecticut	Nevada
Illinois	New Hampshire
Iowa	Ohio
Kansas	Oklahoma
Kentucky	Rhode Island
Louisiana	Vermont
Maine	Washington
Michigan	Wyoming

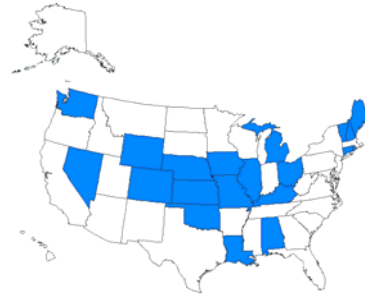


Figure F-4. Random Sample 4

Source: Author

Alabama	Montana
Alaska	Nevada
Arizona	New Hampshire
Arkansas	North Carolina
California	North Dakota
Illinois	Oregon
Kentucky	Rhode Island
Massachusetts	Tennessee
Michigan	Texas
Mississippi	Vermont



Figure F-5. Random Sample 5

Source: Author

Alabama	Massachusetts
Alaska	Missouri
Arkansas	Nebraska
Delaware	New York
Florida	North Carolina
Hawaii	North Dakota
Iowa	Ohio
Kansas	Oklahoma
Kentucky	Oregon
Louisiana	Wisconsin

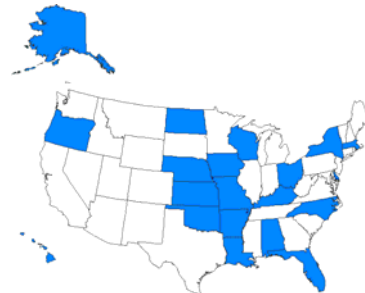


Figure F-6. Random Sample 6

Source: Author

Alabama
Alaska
Arkansas
California
Delaware
Idaho
Indiana
Kentucky
Maryland
Massachusetts

Missouri
Montana
New Hampshire
North Carolina
North Dakota
Oregon
Tennessee
Vermont
Washington
West Virginia



Figure F-7. Random Sample 7

Source: Author

Alabama
Connecticut
Delaware
Hawaii
Idaho
Kentucky
Louisiana
Mississippi
Montana
Nevada

New Hampshire
New Mexico
New York
North Carolina
Oklahoma
South Dakota
Tennessee
Vermont
Washington
Wisconsin

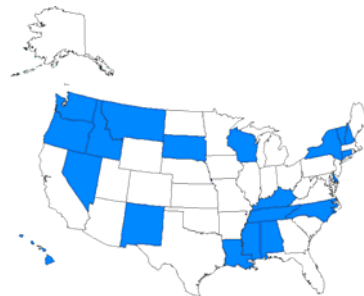


Figure F-8. Random Sample 8

Source: Author

Alabama
Alaska
Florida
Hawaii
Indiana
Kentucky
Minnesota
Montana
New Mexico
Nevada

New York
North Carolina
Oklahoma
Oregon
South Dakota
Tennessee
Texas
West Virginia
Wisconsin
Wyoming

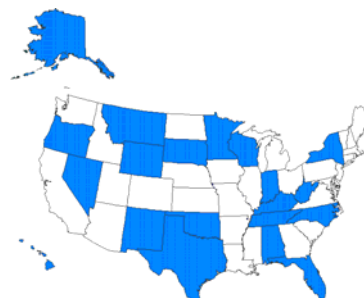


Figure F-9. Random Sample 9

Source: Author

Alabama	Kansas
Alaska	Minnesota
Arizona	New Jersey
Arkansas	New Mexico
California	Oklahoma
Colorado	Oregon
Delaware	Pennsylvania
Georgia	Rhode Island
Idaho	South Dakota
Indiana	West Virginia

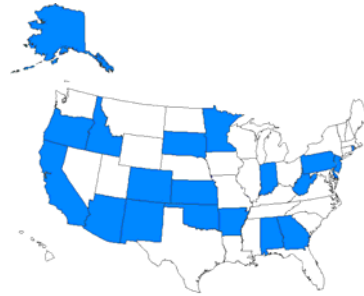


Figure F-10. Random Sample 10

Source: Author