

This paper is based on a talk delivered by Herbert Kritzer, Professor of Law and Political Science at the University of Wisconsin-Madison, delivered July 14, 1999, at a World Bank session organized by the Legal Institutions TG.

Using Public Opinion to Evaluate Institutional Performance: The Experience with American Courts

The public's opinion about how well an agency of government is performing is important for many reasons. But there is a difference between public perceptions of performance and actual performance. As the American experience with judicial reform shows, reformers that would base their prescriptions for institutional reform on perceptions rather than operational data risk attacking the wrong problem with the wrong remedy.

Those who would reform a public institution, be it a court system, a health ministry, or any other government entity, must understand how well its performing. A tempting way to do so is to ask citizens their views about its performance. Such data are easy, and relatively inexpensive, to obtain, particularly in comparison with detailed information on the actual day-to-day operation of governmental institutions.

But if the goal is to assess the actual performance of institutions, one must first know the degree to which the public's image of the institution reflects what the institution does and how well it does it. Unfortunately, there is a substantial risk that the public's opinion of an institution tells us less about the allegedly sad state of the institution and more about the arguably sad state of polling, public misinformation about the system, the public disinformation campaigns of interest groups that expect to profit from certain changes in the system, and the state of news reporting which--by the nature of its selection of what is news and by its gullibility in passing along as truth the press releases of some special interest public relations firms--fosters public misinformation on the subject. Evidence drawn from American efforts to improve the civil and criminal justice systems demonstrate the kinds of problems created by relying upon public opinion and other types of purely perceptual data.

Consider that --

- While the public and elite perception is that there is a significant amount of “frivolous” litigation in the United States, systematic research fails to find more than the occasional frivolous case.
- While certain types of litigation has increased in the U.S., analyses of litigation trends do not support the widespread belief that there has been a litigation explosion.
- While there are examples of litigants abusing the procedures (“discovery abuse”), systematic efforts to try to measure the frequency of such abuse fail to find it to be a frequent occurrence, and efforts to “control” abuse through tighter judicial management actually increase costs rather than reducing costs.

- While corporate officials believe that juries are biased against corporate litigants, systematic studies of jurors fail to support this belief.
- While court delay is a perennial concern, most efforts to identify its causes have failed, and efforts to control it often make assumptions about the sources of delay that have no foundation (see text box).

These are only a few of the misperceptions researchers have documented (for other examples, see Feeley 1983; Galanter 1998; Vidmar 1998).

Misidentifying the Problem: The Ohio Experience with Court Delay

In the 1970s, officials in Ohio became very concerned about delay in the states' criminal courts. Reformers believed that trial court judges were too lax in moving cases along by, for example, frequently granting continuances rather than insisting that lawyers be ready to dispose of cases. Rules were put in place whereby judges had to report regularly on the status of their dockets in order to discourage judges from doing things such as granting frequent continuances. After the rules had been in place for several years, the court system hired a team of researchers to evaluate the impact of the rules. The researchers discovered that, while delay was reduced, the rules had little impact on the number of continuances for the simple reason that continuances were not the problem. They found that most cases had no continuances (.5 or less on average), and because of this, reducing the number of continuances could only marginally affect the processing time of cases.

Source: Grau and Sheskin 1980.

If the regular actors in an institution do not accurately perceive the operation of the institution, it should not be surprising that the public's base of knowledge is even more fragile. Surveys of the public in a particular locale which seek evaluations of the operation of the local courts along specific dimensions such as cost, speed, and efficiency, typically show a fairly high level of public dissatisfaction. For a long time, the conventional wisdom was that contact with the courts led to more negative views.

Newer studies have found the exact opposite: the more recent the contact with the courts, the more positive the assessment. Results from a study in Wisconsin which included a population survey, a survey of persons as they left court, and a mail survey of persons 60-90 days after they had been to court show that those that had had some recent experience with the courts rated them more positively than the general public (Kritzer and Voelker 1998). Indeed, those with the most proximate court experience were more positive than those whose memory of the experience was starting to fade. What these studies show is that there are important differences in how an institution is perceived depending on whether that perception is based on recent personal experience or indirect sources such as anecdotes and news reports.

There is nothing inherent in courts or other institutions that would lead those who are more knowledgeable about them to have more positive, or more negative, views of the

institution. It depends upon the nature of the general, “baseline,” image of the institution (i.e., is that image itself positive or negative), and how the nature of contacts with the institution compare to that image. In the example above, the baseline image of the courts is relatively negative and when people have positive experiences with the court, their evaluations shift, temporarily it appears, in a positive direction. The baseline image reflects a combination of elements: how much basic information citizens have about the institution, the nature of information that flows out about the institution through the news media, and how well that information penetrates the public's consciousness.

The American public's basic knowledgebase regarding public institutions is limited. A recent study conducted in the United States for the American Bar Association concerning the U.S. justice system found that when asked a series of 17 factual questions, only 26% were able to answer 13-17 correctly and another 24% answered less than 8 correctly. Other research shows that the public's level of awareness of even the most important and most discussed Supreme Court cases is surprising low.

Surveys done in 1992 and 1993 starkly illustrates the lack of awareness of even the most important decisions of the United States' most prestigious and influential court. Each of the surveys ran daily for six to eight months; they asked (1) whether or not the Supreme Court had deciding a particular pending case and (2) whether the newly inaugurated President in 1993, Bill Clinton, had done things such as traveled abroad, held news conferences, or appointed a new justice to the Supreme Court. At no time were more than 40% of those surveyed aware that the Court was about to decide a case involving reproductive rights, perhaps the most talked about case of the decade. By contrast, the American public was quite aware of presidential events, with close to 90% of the respondents indicating they knew the President was about to fill a vacancy on the Court and over 90% indicating they knew about a Presidential trip abroad.

Part of the reason for the low awareness is that the courts in the U.S. receive relatively little attention from the media unless there is some unique case or prominent individual involved. Compared to the other national institutions, the U.S. Supreme Court receives relatively little coverage on the national television network news broadcasts. Moreover, a recent book on television news coverage of the U.S. Supreme Court revealed that a significant portion of this small number of stories incorrectly report the nature of the Court's actions in certain types of decisions.

These patterns reflect the nature of “news,” and the need to convey complex issues in simple forms. Both newspapers and broadcast media define news as what is “new” or unusual or interesting to news consumers. The media does not ordinarily report on the routine operation of governmental institutions. In most large cities, murder trials get only a brief mention, unless some prominent person is involved or the case is particularly egregious. When the news media does report on something happening in the courts, it is very likely to be out of the ordinary.

The focus on the extraordinary is illustrated in the reporting of the outcomes of liability trials in the U.S. The American public's primary, and for many people only, source of

information on jury verdicts awarding monetary compensation to persons from physical and other injuries is the news media. However, the verdicts reported in the media are far from typical. The press tends to report only very large verdicts with the result that one study found the median of all verdicts reported exceeded the actual median verdict by several orders of magnitude. Based on published news reports, the American public's view of what juries are doing must be highly skewed.

Whether or not the public supports governmental institutions is an important question because without support it is difficult for institutions to take the initiative. However, the public's perception of institutions does not necessarily coincide with how those institutions are actually operating. Institutions may be running well and be perceived as running poorly, and institutions may be running poorly and be perceived as running well. The linkage between the public's perception and the institutional reality is mediated through a combination of baseline images of institutions, the nature of the sources of information available to the public about the institutions, and the attentiveness of the public to the institutions. All of these factors must be considered in determining the weight to be placed on public perceptions, *and* public perceptions must be considered in the context of systematic information derived directly from the day-to-day operation of the institutions of interest. Failure to assess the usefulness of opinion-based information on institutional performance will lead to misdirected reform efforts that either address problems that do not actually exist, or lead toward solutions to real problems that fail to recognize the root sources of those problems and hence fail to result in the needed improvements.

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Click [HERE](#) for more of Professor Kritzer's work on courts and judicial institutions.

Suggested Reading:

Feeley, Malcolm M. 1983. *Court Reform on Trial: Why Simple Solutions Fail*. New York: Basic Books.

Galanter, Marc (1998) "An Oil Strike in Hell: Contemporary Legends about the Civil Justice System." 40 *Arizona Law Review* 717-752.

Grau, Charles W. and Arlene Sheskin. 1980. *Ruling Out Delay: Impact of Ohio's Rules of Superintendence Upon the Administration of Justice*. Chicago: American Judicature Society.

Kritzer, Herbert M. and John Voelker. 1998. "Familiarity Breeds Respect: Evaluating the

Wisconsin Courts.” 82 *Judicature* 58-64, available at
<<http://ps.polisci.wisc.edu/~kritzer/research/courteval/judicature.htm>>
Vidmar, Neil (1998) “The Performance of the American Civil Jury: An Empirical Perspective.”
40 *Arizona Law Review* 849-899.